



## **AGENDA**

### **REGULATION COMMITTEE**

**Tuesday, 25th January, 2011, at 10.00 am**  
**Council Chamber, Sessions House, County**  
**Hall, Maidstone**

Ask for: **Andrew Tait**  
Telephone **01622 694342**

*Tea/Coffee will be available 15 minutes before the start of the meeting.*

#### **Membership (17)**

Conservative (15): Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman),  
Mr A H T Bowles, Mr R Brookbank, Mr C J Capon, Mr H J Craske,  
Mr J M Cubitt, Mr J A Davies, Mr T Gates, Mr S Manion,  
Mr R F Manning, Mr J M Ozog, Mr R A Pascoe, Mr J N Wedgbury  
and Mr M J Whiting

Liberal Democrat (1): Mr S J G Koowaree

Independent (1) Mr R J Lees

#### **UNRESTRICTED ITEMS**

*(During these items the meeting is likely to be open to the public)*

1. Substitutes
2. Declarations of Interests by Members in items on the Agenda for this meeting.
3. Minutes (Pages 1 - 20)
  - (a) Committee: 9 September 2010
  - (b) Member Panel: 14 September 2010  
19 October 2010  
26 October 2010  
30 November 2010
4. Home to School Transport (Pages 21 - 26)
5. Presentation by Tom Pierpoint (Public Transport Team Leader) on Bus Passes
6. Update from the Commons Registration Team (Pages 27 - 30)
7. Proposals arising from the review of the Register of Common Land and Town and Village Greens (Pages 31 - 42)

8. Update on Planning Enforcement Issues (Pages 43 - 56)
9. Strengthening of Planning Enforcement (Pages 57 - 62)
10. Update on planning enforcement issues at Deal Field Shaw (Shaw Grange), Charing (Pages 63 - 66)
11. Other Items which the Chairman decides are Urgent
12. Motion to exclude the press and public  
That under Section 100A of the Local Government Act 1972, the public be excluded from the meeting for the following business on the grounds that it involves the likely disclosure of exempt information as defined in paragraphs 5 and 6 of Part 1 of Schedule 12A of the Act.

### **EXEMPT ITEMS**

*(During these items the meeting is likely NOT to be open to the public)*

13. Enforcement Strategy for Four Gun Field, Otterham Quay Lane, Upchurch (Pages 67 - 68)

Peter Sass  
Head of Democratic Services and Local Leadership  
(01622) 694002

**Monday, 17 January 2011**

*Please note that any background documents referred to in the accompanying papers maybe inspected by arrangement with the officer responsible for preparing the relevant report.*

## KENT COUNTY COUNCIL

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### REGULATION COMMITTEE

MINUTES of a meeting of the Regulation Committee held in the Council Chamber, Sessions House, County Hall, Maidstone on Thursday, 9 September 2010.

PRESENT: Mr M J Harrison (Chairman) Mr A D Crowther (Vice-Chairman) Mr D L Brazier (Substitute for Mr A H T Bowles), Mr R Brookbank, Mr C J Capon, Mr H J Craske, Mr J M Cubitt, Mr J A Davies, Mr T Gates, Mr P J Homewood (Substitute for Mr R A Pascoe), Mr R J Lees, Mr S Manion, Mr J M Ozog, Mr M J Vye (Substitute for Mr S J G Koowaree) and Mr M J Whiting

ALSO PRESENT:

IN ATTENDANCE: Mrs S Thompson (Head of Planning Applications Group), Mr R Gregory (Principal Planning Officer Enforcement), Mr S Bagshaw (Head of Admissions & Transport), Miss M McNeir (Public Rights Of Way and Commons Registration Officer) and Mr A Tait (Democratic Services Officer)

### UNRESTRICTED ITEMS

#### **17. Membership**

*(Item 1)*

The Committee noted the appointment of Mr J A Davies in place of Mr W A Hayton.

#### **18. Minutes**

*(Item 4)*

RESOLVED that the Minutes of the Committee meeting held on 18 May 2010 and of the member Panel meeting held on 25 May 2010 are correctly recorded and that they be signed by the Chairman.

#### **19. Amendments to the Committee's Terms of Reference**

*(Item 5)*

RESOLVED that the following amendment to term of reference (c) and new term of reference (g) be noted:-

- (c) the creation, stopping up, diversion of any footpath or bridleway or restricted byway or the reclassification of any public path where substantive objection has been raised or a political party or the local member objects; and
- (g) the discharge of persons who are subject to guardianship, pursuant to section 23 of the Mental health Act 1983 on the recommendation of the Director of Adult Social Services.

## **20. Committee meeting dates in 2011**

*(Item 6)*

The Committee noted the following meeting dates in 2011:-

Tuesday, 25 January 2011;  
Tuesday, 17 May 2011; and  
Wednesday, 7 September 2011.

## **21. Mental Health Guardianship Panels**

*(Item 7)*

RESOLVED that the content of the report be noted.

## **22. Update from the Commons Registration Team**

*(Item 8)*

RESOLVED that the content of the report be noted.

## **23. Home To School Transport**

*(Item 9)*

(1) Mr S C Manion made a declaration of personal interest as his children were in receipt of home to school transport.

(2) RESOLVED that the report be received.

## **24. South East Plan Update**

*(Item 10)*

RESOLVED that the content of the report be noted together with its implications for the delivery of the County Council's enforcement function.

## **25. Unauthorised Development**

*(Item 11)*

RESOLVED that the stance taken by the Kent Leaders be noted.

## **26. Update on Planning Enforcement Issues**

*(Item 12)*

(1) The Committee noted the views of Mr R W Gough and Mrs J Whittle in respect of the planning enforcement issues in their electoral districts set out in the report.

(2) RESOLVED to endorse the actions taken or contemplated on the respective cases set out in paragraphs 5 to 49 of the report together with those contained within Schedules 1 and 2 of Appendices 1 and 2 to the report.

## **EXEMPT ITEMS**

### **(Open Access to Minutes)**

*(Members resolved under Section 100A of the Local Government Act 1972 that the public be excluded from the meeting for the following business on the grounds that it involved the likely disclosure of exempt information as defined in paragraphs 5 and 6 of Part 1 of Schedule 12A of the Act)*

#### **27. Update on Planning Enforcement issues at Deal Field Shaw, Charing**

*(Item 15)*

(1) The Head of Planning Applications Group reported the latest enforcement position concerning the Deal Field Shaw (Shaw Grange) former landfill site in Charing.

(2) RESOLVED that the report be received and that the actions taken in paragraphs 3 to 5 of the report be noted.

#### **28. Update on Planning Enforcement issues at Four Gun Field, Upchurch**

*(Item 16)*

(1) The Head of Planning Applications Group reported the latest enforcement strategy concerning the Four Gun Field site in Otterham Quay Lane, Upchurch.

(2) RESOLVED that the enforcement strategy outlined in paragraphs 4 to 7 of the report be noted.

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## REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Stour Room, Sessions House, County Hall, Maidstone on Tuesday, 14 September 2010.

PRESENT: Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman), Mr R Brookbank, Mr T Gates and Mr S J G Koowaree

ALSO PRESENT:

IN ATTENDANCE: Mr C Wade (Countryside Access Principal Case Officer), Miss M McNeir (Public Rights Of Way and Commons Registration Officer) and Mr A Tait (Democratic Services Officer)

### UNRESTRICTED ITEMS

#### **11. Application to register land known as Brittain's Common in Sevenoaks as a new Town Green** (Item 3)

(1) The Public Rights of Way and Commons Registration Officer introduced the report, explaining that it was an application under Section 15 (8) of the Commons Act 2006 which enabled the owner of the land to apply to voluntarily register the land as a new Town Green without having to meet the qualifying criteria. She explained that her recommendation for acceptance was because she was satisfied that the relevant legal tests had been met. This recommendation made an exception of the bus shelter at the east end of the site, as registration would make it difficult to repair or rebuild.

(2) RESOLVED to inform the applicant that the application to register the land known as Brittain's Common at Sevenoaks has been accepted and that the land subject to the application (with the exception of the bus shelter) be formally registered as a Town Green.

#### **12. Application to register land known as Ryarsh Recreation Ground in Ryarsh parish as a new Village Green** (Item 4)

(1) The Public Rights of Way and Commons Registration Officer introduced the report, explaining that it was an application under Section 15 (8) of the Commons Act 2006 which enabled the owner of the land to apply to voluntarily register the land as a new Village Green without having to meet the qualifying criteria. She explained that her recommendation for acceptance was because she was satisfied that the relevant legal tests had been met. This recommendation made an exception of the access track to the Village Hall, as registration would make it an offence to drive a motor vehicle on it (as part of a Village green) and because driving on a Village Green would constitute a damaging activity which would be prohibited under Victorian statutes designed to protect Village Greens .

- (2) RESOLVED to inform the applicant that the application to register the land at Ryarsh Recreation Ground has been accepted and that the land subject to the application (with the exception of the access track to the Village Hall) be formally registered as a Village Green.

### **13. Application to register land known as "The Glen" at Minster-on-Sea as a new Village Green**

*(Item 5)*

- (1) Mr A D Crowther informed the Panel that he was the Local Member and would not take part in the decision – making process.
- (2) The Public Rights of Way and Commons Registration Officer introduced the report, explaining that it was an application under Section 15 (1) of the Commons Act 2006. There had been no objection to the application by the landowner, Swale Borough Council. She explained that her recommendation for acceptance was because she was satisfied that all the relevant legal tests had been met.
- (3) RESOLVED to inform the applicant that the application to register the land at The Glen, Minster-on-Sea has been accepted and that the land subject to the application be formally registered as a Village Green.

### **14. Application to register land known as Barton Playing Field in Canterbury as a new Town Green**

*(Item 6)*

- (1) Further written views from Dr S Bax (the applicant) had been circulated to the Panel before the meeting. Correspondence from Mr M J Northey, the Local Member was tabled.
- (2) The Public Rights of Way and Commons Registration Officer introduced the report, explaining that it was an application under Section 15 (1) of the Commons Act 2006. The application had been considered by a Panel on 12 November 2008. This Panel had deferred making a decision pending a Non-Statutory Public Inquiry.
- (3) The Public Rights of Way and Commons Registration Officer then informed the Panel that the Independent Inspector had concluded that the application had not met the test of use being “as of right.”
- (4) The Public Rights of Way and Commons Registration Officer went on to say that following publication of the Inspector’s report, there had been a ruling by the Supreme Court which had indicated that the “deference test” which had often been used on previous occasions could not be used to determine whether use had been “as of right.” A second QC had been consulted (following a request by the applicant) and had recommended that the original Inspector should be re-consulted in the light of the Supreme Court’s ruling. The Inspector had confirmed his recommendation for rejection of the application on the grounds that use of the land had been by force and could not therefore have been “as of right.”



(5) Dr S Bax, the applicant spoke in support of the application. He used his latest written correspondence as the basis for his remarks. He asked the Panel to either reject the Director of Environment and Waste's recommendation or to defer a decision pending further legal advice. His grounds were that neither the second QC nor the inspector had addressed the judgements of Justice Sullivan or Lord Walker in respect of whether sufficient actions had been taken by the landowner to make clear to others that he was not acquiescing in their use of the land.

(5) Mr B Slater from the Governing Body of Barton Court School spoke as the applicants' representative. He asked the Panel to support the Director of Environment and Waste's recommendation as both the Inspector and the QC had been fully aware of the relevant judgements and had not overturned the original recommendation.

(6) The Public Rights of Way and Commons Registration Officer said that the recommendation for rejection of the application was that (notwithstanding the judgements referred to by Dr Bax in respect of "deference" and "acquiescence") use of the land in this instance had been by force rather than "as of right."

(7) On being put to the vote, the recommendations of the Director of Environment and Waste were unanimously agreed.

(8) RESOLVED that for the reasons set out in the Inspector's report dated 27 November 2009 and his supplementary report dated 15 July 2010, the applicant be informed that the application to register the land known as Barton Playing Field at Canterbury has not been accepted.

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## KENT COUNTY COUNCIL

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### REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Eliot Room, Thanet District Council, Cecil Street, Margate on Tuesday, 19 October 2010.

PRESENT: Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman), Mr J A Davies, Mr S J G Koowaree and Mr R F Manning

ALSO PRESENT: Mr R A Pascoe

IN ATTENDANCE: Mr C Wade (Countryside Access Principal Case Officer), Miss M McNeir (Public Rights Of Way and Commons Registration Officer) and Mr A Tait (Democratic Services Officer)

### UNRESTRICTED ITEMS

#### **15. Application to register land at Montefiore Avenue, Ramsgate as a new Town Green.**

*(Item 3)*

(1) Members of the Regulation Committee had visited the application site prior to the previous Panel meeting on 6 February 2009.

(2) A petition from "Hands off Our Tennis Courts" (HOOT) was submitted to the Panel. It requested approval for the Montefiore Village Green application and was signed by 1514 members of the public.

(3) The Panel noted that the land was known locally as "the Old Putting Green" rather than as the "Old Bowling Green." The Panel later also accepted Mrs Fenner's evidence that the site had been acquired by Ramsgate Borough Council in 1948 and that ownership had transferred to Thanet DC in 1973.

(4) The Public Rights of Way Officer introduced her report. She explained that it had previously been considered by the Panel on 6 February 2009 where it had been resolved to submit it for examination by a Non-Statutory Public Inquiry. The Inspector had submitted a 150 page report which had concluded that the application should be rejected on three grounds: the use of the application site had not been "as of right" for the whole of the twenty year period; use of the site had not been by a significant number of the residents of the locality; and in relation to the triangular piece of land adjacent to the tennis courts, use had not consisted of lawful sports and pastimes.

(5) Mr M Matthews, the applicant addressed the Panel in support of the application. He provided the Panel with a number of photographs of the site in support of the points made by him and by supporters of the application. He said that he had lived opposite the site from 1978 to 2008. He wished to make a number of points concerning the operation of the Non-Statutory Public Inquiry.

(6) Mr Matthews said that much of the case had involved interpretation of evidence. Most of the Objectors' witnesses had been Officers from Thanet DC, who had not been able to provide documentary evidence in support of their assertions. Witnesses for the applicants had all been lay people (some of them very elderly) who had been unaware of the precise nature of the English language used by Thanet DC's Barrister. Two witnesses had decided that they would rather not face questioning by a Barrister. Those who had given evidence had later said that they would never do so again.

(7) Mr Matthews said that there were improvements that could be made to the evidence gathering stage of Non-Statutory Public Inquiries. For example, the adversarial nature of the proceedings could have been mitigated if the Inspector had collected statements from people in their homes.

(8) Mr Matthews then said that he disagreed with the Inspector's view that there had not been a significant number of residents within the locality using the site. In order to comply with the need to identify a recognised administrative division, he had chosen the Ecclesiastical Parish of Holy Trinity in Ramsgate. However, since the border of this parish ran very close to the site boundary, a number of people who would have testified that they had used the site could not be called to give evidence to the Inspector. He believed that to use recognised administrative divisions was unnecessarily restrictive when attempting to define a locality or a neighbourhood within a locality.

(9) Mr Matthews then said that the question of the purpose for which Thanet DC had acquired the land had not become a significant one for the Inspector until the fifth day of the Inquiry. He suggested that, in future, a question of fact of this nature should be investigated before the Inquiry opened.

(10) Mr Matthews concluded his remarks by thanking the two Officers, Mr Wade and Ms McNeir for all their helpful and impartial advice during the entire process.

(11) Mr A Poole, a local District Councillor spoke in support of the application. He said that evidence gathered had given good grounds to conclude that the fence had been in a state of disrepair and long-term neglect during the qualifying period from 1987 to 2007. There would therefore have been no need for the residents to use force to gain access to the site. He asked the Panel to consider the photographic evidence of a very mature tree on the fence line as well as the metal straining post which leant towards Montefiore Avenue, suggesting that there had not been a fence there for a long time.

(12) Mr Poole then said that although the Inspector had concluded that people had needed to squeeze through a gap in the fence in order to get onto the land, this was contradicted by the need for the hole to be sufficient for a gang mower to gain admission. One of the photographs showed the level of tarmac rising to the ground level of the site. He believed that this strongly suggested that the gang mowers had used the gap entrance. In any case, they could not have entered the bottom part of the site from the putting green area because the entrance from that part of the site was too narrow for them ever to have done so.

(13) Mrs M Fenner, a local District Councillor said that the number of signatures on the petition showed the level of local support for town green status to be granted to

this piece of land. She questioned the reasons for Thanet DC's decision to spend a large amount on resisting the wishes of the local population. She believed that the local residents who had given evidence had been made to feel that they were doing something wrong and that some of them had been made to say things against their understanding. An example of this was the term "squeezing through" which would not have occurred to people without being suggested to them as the gap in the fence was very wide.

(14) Mrs Fenner also asked the Panel to note that the Inspector's comment about her having no personal knowledge of the site had been irrelevant. Her statement had been given in her capacity as the local Councillor in order to rebut the statement given by an Officer at the Inquiry that there had been vandalism on the site.

(15) Mr P Verrall (Estates Manager – Thanet DC) spoke in opposition to the application. He said that the site had been identified by the District Council as one where it would be appropriate to provide new tennis courts with better lighting. Not all the evidence presented by the District Council had been provided by Officers. The Secretary of the neighbouring Croquet Club had been present to say that the site had been secured at its top end. A fencing contractor had recalled putting the fence up. Unfortunately, because the Council only retained paper records for a short space of time, and the contractor who had put the fencing up had gone out of business it was impossible to provide the documentary evidence requested. Nevertheless, the recollection of those who had given evidence on behalf of the District Council was that the fencing had been erected in the 1990s.

(16) On being put to the vote, the recommendations of the Director of Environment and Waste were unanimously agreed.

(17) RESOLVED that for the reasons set out in the Inspector's report dated 29 May 2010, the applicant be informed that the application to register the lands at Montefiore Avenue at Ramsgate has not been accepted.

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## REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the TN2 Community Centre, Greggs Wood Road Sherwood, Tunbridge Wells on Tuesday, 26 October 2010.

PRESENT: Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman), Mr R Brookbank and Mr R A Pascoe

ALSO PRESENT: Mr J R Bullock, MBE and Mr K G Lynes

IN ATTENDANCE: Mr C Wade (Countryside Access Principal Case Officer), Miss M McNeir (Public Rights Of Way and Commons Registration Officer) and Mr A Tait (Democratic Services Officer)

### UNRESTRICTED ITEMS

#### **16. Application to register land at the former Council Offices, Cranbrook as a new Village Green** *(Item 3)*

(1) Members of the Panel visited the application site prior to the meeting. The visit was attended by Dr L Hall (the applicant); Mrs J Roberts (Tunbridge Wells BC – the landowner) and by some 15 members of the public.

(2) Correspondence from Cranbrook and Sissinghurst Parish Council was circulated to the Panel Members prior to the meeting.

(3) The Public Rights of Way Officer introduced the application. She explained the reasons for the Director of Environment and Waste's recommendations to refuse the application. These were that the Offices themselves could not have been used by the public as of right; and that the land surrounding the building had not been used by a significant number of inhabitants from a neighbourhood within the administrative parish of Cranbrook and Sissinghurst for lawful sports and pastimes (which had only taken place infrequently).

(4) Mr A Bringloe addressed the Panel in support of the application. He said that he had been employed as the most senior Officer at the Borough Council Offices in Cranbrook between 1992 and 2006. During this period there had been a number of activities such as dog walking. Children were always playing outside during Office hours (skateboarding, cycling, football). On occasions, the Office staff had needed to ask the children to keep the noise down. The decision to allow these activities had been taken following consultation with the Police, because it was considered to be preferable for the children to play there than in the road.

(5) Mr Bringloe said that the gates were never shut during the time that he had been there. It would have been pointless to lock them as so many people had keys to the site and building. He took issue with the description of the Offices in paragraph 21 of the report as a commercial building and said that because of the frequency of its

use by the public, it had many of the attributes of a village hall and was seen as such by the local residents. Its many users included the Vine Church, the Town Band (who kept their instruments there), Age Concern and the Kent Highways Project.

(6) Mr Bringloe replied to a question by Mr Pascoe by saying that users were charged for using the building.

(7) Mrs J Martin-Gutkowska said that she lived in the neighbouring Wheatfield Drive. She had personally seen the frequency with which children (including her son) had used the land to play in. She had taken pictures of her son skateboarding there whilst she had personally used the land for bird watching. Many of the residents had affirmed that their children and grandchildren played there as it was the only safe, open place in the vicinity, particularly for those children who lived in Joyce Close (which bounded the site to the North).

(8) Mr N Whitehead said that he lived opposite the Council Offices. He had seen that the site had been used as a playground by teenagers for biking, skateboarding, football, swinging on the railings, tree climbing. Dog walking and overnight camping had also taken place. These uses had continued even after the gates were locked in 2008 after the Borough Council had ceased to occupy the building.

(9) Dr L Hall, the applicant introduced herself as a local Borough Councillor. She said that the building was not a commercial building. It was a public building purchased with tax payers' money. The land was in a Conservation Area and would therefore most appropriately be designated as a village green.

(10) During Dr Hall's presentation, the Chairman ruled that unsubstantiated allegations about the motives of corporate bodies and individuals could not be considered by the Panel. He also warned her that she needed to confine her comments to the matter in hand as it was not within the Panel's remit to come to a decision on anything else.

(11) Dr Hall said that she believed that the application should be referred to a non-statutory Public Inquiry as paragraph 19 of the report had stated that the Law was silent on the question of whether a building could be granted the status of a Village Green. Another reason for an Inquiry was that witnesses had attested that the Offices were overrun by the public with only the Planning Department rooms remaining locked.

(12) Dr Hall then said that the railings on the roof of the building had been placed there in order to prevent children kept climbing onto it to retrieve their footballs. This, and other people's testimonies indicated that there had been far greater use by the public than was suggested in the report. Use had taken place after school, at weekends and during public holidays.

(13) Dr Hall questioned whether the signs at the site entrance gave a clear message to the public that they would be trespassing if they entered the site. On 11 October 2010, they had read "secured for public safety". This was not the same message that now appeared at the entrance.

(14) Dr Hall said that the Summary of user evidence set out in Appendix C to the report was misleading. She considered that placing observations of children playing



in a "Comments" column had the effect of belittling the evidence given. Many people were referring to their own children and grandchildren when they said that they had observed children at play. She did not believe that evidence of use should be confined to personal use alone.

(15) The Public Rights of Way Officer said that the reason that the report referred to a "commercial" building was because it could not be described as "residential" or "recreational". She explained that in order for the building to pass the "use as of right" test, it would have to be freely available at all times of the day. If users were given keys to the building, they were using it with permission. In respect of the land, the report accepted that those who did use the land were in fact doing so as of right.

(16) The Public Rights of Way Officer said that the summary of evidence set out in Appendix C followed a standard formula which acknowledged those who witnessed use by others but separated them out from people who were describing their own personal use. She explained that there was no duty on Officers to investigate in Village Green applications. Their responsibility was to evaluate the evidence provided by applicants and objectors.

(17) Miss J Roberts (Legal Services - Tunbridge Wells BC) said that the gates had been closed on occasions during the qualifying period and had been opened between 6 am and 10.30 pm. The roof railings to which Dr Hall had referred had been installed for Health and Safety reasons in 1998. She could not understand Dr Hall's statement that the signs had been changed recently because an invoice for the signs had been paid for in 2007 and had never been changed since then.

(18) Miss Roberts said that the Panel should ignore irrelevant statements about people's feelings on the matter, use as a cut-through, as a car park or council-related uses. Picnicking had mainly been done by Borough Council employed staff. Whilst the Borough Council accepted that there had been some use of the site car park by youths in the evenings and at weekends, this did not represent use by a significant number of people within a locality or neighbourhood within a locality.

(19) On being put to the vote, the recommendations of the Director of Environment and Waste were unanimously agreed.

(20) RESOLVED that the applicant be informed that for the reasons set out in the report, the application to register the land at the former Council Offices site at Cranbrook as a new Village Green has not been accepted.

## **17. Application to register land at Sherwood Lake in Tunbridge Wells as a new Town Green**

*(Item 4)*

(1) Members of the Panel visited the site prior to the meeting. The visit was attended by the applicant, Mr J Chappell and by Mr K G Lynes, the Local Member. The landowners, Gleeson Strategic Land Limited had been invited but did not attend.

(2) Correspondence from Gleeson Strategic Land Limited dated 19 and 22 October 2010 had previously been circulated to all Members of the Panel. Photographs taken by the Officers had also been circulated to them showing the network of paths through the woodland.

(3) The Public Rights of Way Officer introduced the application and explained the reasons for the Director of Environment and Waste's recommendations. She explained that the landowners had submitted three grounds for objection and considered each of these in turn.

(4) The Public Rights of Way Officer said that the Landowner's first ground for objection was that the evidence submitted related almost exclusively to the lake. She had, however, concluded that there was very clear evidence of use as well trodden paths criss-crossed the site, whilst the large amounts of litter indicated widespread use of the entire site. The Public Rights of Way Officer referred the Panel to Lightman J's comments in paragraph 95 of the first instance in the Oxfordshire case as well as to Lord Hoffman's comments in paragraph 67 of the House of Lords decision in the same case.

(5) The Public Rights of Way Officer said that the Landowner's second ground for objection was that the previous landowner had entered into a legal agreement with the Sherwood Park Angling Club in 1994. This agreement was contained in paragraph D of the report and certainly indicated that the Angling Club was using the land with permission. Gleesons had not, however, been able to provide any further information about the users. Nor had they been able to show in what way this agreement had been enforced. It was therefore very difficult to conclude that the general use of the site had not been as of right.

(6) The Public Rights of Way Officer said that the Landowner's third ground for objection was that a fence had been erected along the boundary with Greggs Wood Road in 2008 and that this had replaced an earlier fence. Gleesons had been asked to provide evidence of locked gates or notices but had been unable to do so.

(7) The Public Rights of Way Officer responded to several criticisms raised by Gleesons in their letters relating to procedural matters. She explained that the County Council had no investigative duty in relation to Village green applications and that it was for the landowners to provide rebutting evidence. They had been provided with ample opportunity to do so. She added that the grounds for holding a Public Inquiry were set out in the Whitney case and referred the Panel to paragraph 66 of the Court of Appeal's judgement in that case. She also responded to the Human Rights issue raised by Gleesons by referring the Panel to Lord Scott's comments in paragraph 86 of the House of Lords judgement in the Oxfordshire case.

(8) The Public Rights of Way Officer concluded her presentation by saying that, in her view, all the legal tests concerning the registration of the land as a Town Green had been met.

(9) Mr J Chappell, the applicant introduced himself as the Chair of the Friends of Sherwood Lake. He said that the local community wanted the lake and woodland registered as a Town Green as they had engaged in lawful sports and pastimes there for an uninterrupted period of more than the required period of 20 years.

(10) Mr F Williams, the local Borough Councillor, said that walkers used the site because they were attracted by the beauty of the woods with their beech trees and sweet chestnuts. They also enjoyed walking their dogs. The lake was not just used for fishing. The local Brownies and many informal users used it for other lawful

pastimes. This was why the entire local population wanted this application to succeed.

(11) The Chairman offered the representatives from Gleeson Strategic Land Ltd the opportunity to address the Panel. They respectfully declined.

(12) Mr K G Lynes (Local Member) said that that local people had lost access to the lake since it had been recently fenced off. Before the fencing had gone up, they had organised litter picking on the site in order to take care of the land. If this application were to be granted, the lake and woodland would be brought back into full enjoyment for the local residents, their children and grandchildren.

(13) On being put to the vote, the recommendations of the Director of Environment and Waste were unanimously agreed.

(14) RESOLVED that the applicant be informed that the application to register the land at Sherwood Lake, Tunbridge Wells has been accepted and that the land subject to the application be formally registered as a Town Green.

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## REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Canterbury City Council, Military Road, Canterbury CT1 1YW on Tuesday, 30 November 2010.

PRESENT: Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman) and Mr S J G Koowaree

IN ATTENDANCE: Mr C Wade (Countryside Access Principal Case Officer), Miss M McNeir (Public Rights Of Way and Commons Registration Officer) and Mr G Rudd (Assistant Democratic Services Manager)

### UNRESTRICTED ITEMS

**18. Application to register land at Brickfields, Mill Lane in the parish of Bridge as a new Village Green**  
(Item 3)

(1) The PROW – (Definition Team) introduced the report in detail and explained the grounds for the recommendation set out in paragraph 44 of the report. .

(2) Mr S J Koowaree moved, seconded by Mr A D Crowther that the recommendation set out in the report be adopted.

*Carried Unanimously.*

(3) RESOLVED that for the reasons stated in the Inspector's report dated 5 October 2010, the applicant be informed that the application to register the land known as Brickfields and the Water Meadow in the parish of Bridge as a new Village Green has not been accepted.

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By: Head of Democratic Services & Local Leadership

To: Regulation Committee – 25 January 2011

Subject: Home To School Transport

Classification: Unrestricted

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Summary: To provide Members with a brief overview on Home to School Transport Policy, and the role of the Transport Appeals Panel, including Home to School Transport appeal statistics for the period between 1 January 2010 and 31 December 2010 and for the corresponding period in 2009.

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## **1. Introduction**

The Chairman has requested that the Committee receive a brief overview on Home to School Transport Policy, and the role of the Transport Appeals Panel. More information on this will be provided by Officers at the meeting.

## **2. Transport Appeal Statistics – 2010**

(2.1) For the period between 1 January 2010 to 31 December 2010 a total of 84 Home-to-School Transport appeals were submitted to 24 Transport Appeal Panel meetings. 38 were successful, (45%) at least in part (eg, time-limited assistance).

(2.2) 35 of the appellants had Local Member representation at their appeals and 14 different Members sat on the Transport Appeal Panels.

## **3. Transport Appeal Statistics – 2009**

(3.1) Corresponding figures for the same period in 2009 were 114 appeals to 26 Panels with 58 (51%) at least partly successful.

(3.2) 47 of the appellants had Local Member representation at their appeals and 22 different Members sat on the Transport Appeal Panels (NB: There were several new Members since the County Council elections who sat replacing Members no longer on the Council ).

## **4. Statistic Details**

(4.1) Details relating to the Admissions and Transport Home to School Transport appeals for Mainstream Pupils are set out in Appendix 1. Those submitted by the Additional Educational Needs Teams in respect of Statemented Pupils are shown in Appendix 2.

## **5. Costs**

(6.1) Members will receive information at the meeting relating to the approximate total cost of mainstream transport for the year.

## **6. Recommendations**

(6.1) Members are asked to note this report.

Geoff Rudd  
Assistant Democratic Services Manager (Appeals)  
Tel No: (01622) 694358  
e-mail: [geoffrey.rudd@kent.gov.uk](mailto:geoffrey.rudd@kent.gov.uk)



**MAINSTREAM HOME TO SCHOOL TRANSPORT APPEALS  
(ADMISSIONS AND TRANSPORT)**

**1 JANUARY 2010 - 31 DECEMBER 2010**

Grounds for Appeal	Upheld	Not Upheld	Total	% Upheld
Denominational	2	1	3	67
Distance	2	0	2	100
Not Attending NAS	23	25	48	48
16+	4	2	6	67
Hazardous Routes	0	1	1	0
Other	0	0	0	0
Low Income Criteria	1	2	3	33
<b>TOTALS</b>	<b>32</b>	<b>31</b>	<b>63</b>	<b>51</b>

**APPEALS BY AREA:** WEST: 17 - MID: 25 - EAST: 18 - O/S KENT: 3

**1 JANUARY 2009 - 31 DECEMBER 2009**

Grounds for Appeal	Upheld	Not Upheld	Total	% Upheld
Denominational	0	2	2	0
Distance	6	4	10	60
Not Attending NAS	42	37	79	53
16+	0	0	0	0
Hazardous Routes	1	0	1	100
Other	3	4	7	43
Low Income	0	0	0	0
<b>TOTALS</b>	<b>52</b>	<b>47</b>	<b>99</b>	<b>53</b>

**APPEALS BY AREA:** WEST: 41 - MID: 20 - EAST: 38 - O/S KENT: 0

**STATEMENTED PUPILS HOME TO SCHOOL TRANSPORT APPEALS  
(ADDITIONAL EDUCATION NEEDS)**

**1 JANUARY 2010 - 31 DECEMBER 2010**

Grounds for Appeal	Upheld	Not Upheld	Total	% Upheld
Denominational	0	0	0	0
Distance	3	7	10	33
Not Attending NAS	2	7	9	22
16+	1	1	2	50
Hazardous Routes	0	0	0	0
Other	0	0	0	0
Low Income Criteria	0	0	0	0
<b>TOTALS</b>	<b>6</b>	<b>15</b>	<b>21</b>	<b>29</b>

**APPEALS BY AREA:** WEST: 5 - MID: 5 - EAST: 11 - O/S KENT: 0

**1 JANUARY 2009 - 31 DECEMBER 2009**

Grounds for Appeal	Upheld	Not Upheld	Total	% Upheld
Denominational	0	0	0	0
Distance	4	6	10	40
Not Attending NAS	2	2	4	50
16+	0	0	0	0
Hazardous Routes	0	0	0	0
Other	0	1	1	0
Low Income Criteria	0	0	0	0
<b>TOTALS</b>	<b>6</b>	<b>9</b>	<b>15</b>	<b>40</b>

**APPEALS BY AREA:** WEST: 5 - MID: 3 - EAST: 7 - O/S KENT: 0

**PANEL MEMBERS UP TO 31 DECEMBER 2010**

**PANELS ATTENDED**

<b>Mr M Harrison (Chairman)</b>	<b>21</b>
<b>Mr I Chittenden</b>	<b>12</b>
<b>Mr H Craske</b>	<b>15</b>
<b>Mr J Cubitt</b>	<b>6</b>
<b>Mrs V Dagger</b>	<b>6</b>
<b>Mr T Gates</b>	<b>5</b>
<b>Mr P Homewood</b>	<b>8</b>
<b>Mr G Horne</b>	<b>1</b>
<b>Mr C Hibberd</b>	<b>1</b>
<b>Mr G Koowaree</b>	<b>5</b>
<b>Mr R Lees</b>	<b>1</b>
<b>Mr R Pascoe</b>	<b>13</b>
<b>Mrs P Stockell</b>	<b>1</b>
<b>Mr R Tolputt</b>	<b>10</b>

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## Update from the Commons Registration Team

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A report by the Director of Environment and Waste to Kent County Council's Regulation Committee on Tuesday 25<sup>th</sup> January 2011

### Recommendation:

**I recommend that Members receive this report for information**

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### Progress with Village Green applications

1. Members have requested that a summary of the current position of applications to register Town and Village Greens be provided at meetings of the Regulation Committee. A copy of the Schedule of Village Green applications is therefore attached at **Appendix A**.
2. During the last twelve months, there have been 7 Regulation Committee Member Panel meetings and a total of 13 applications to register land as a new Village Green have been determined. Of these, 6 were registered as new Town or Village Greens.
3. The County Council continues to receive applications at a rate of approximately one a month and Officers are dealing with a large number of enquiries in relation to Village Greens generally. There are currently 22 Village Green applications outstanding, of which 15 are currently under investigation. There are two Member Panels scheduled to take place in February at which it is intended to deal with 8 cases. It is hoped that this will enable Officers to reduce the current backlog of six months.

### Case Law update

4. There has been yet another important case since the last report to Members in September, which will have an impact upon the manner in which Members take decisions in the future on applications to register land as a Town or Village Green. It seems opportune therefore to provide Members of this Committee with a short resume of one of the main findings set out by the Judge in the recent High Court decision in *Betterment Properties v Dorset County Council*<sup>1</sup> ("the Betterment case").
5. The Betterment case gives greater amplification to the expression 'as of right'. In this respect it contains an important discussion of when use of land is not 'as of right' for Town and Village Green purposes because it is *contentious*.
6. The previous understanding of 'as of right' as meaning without force, secrecy or permission has been well recited to Members in the past. The Judge in the Betterment case however has now concluded that use was not 'as of right', even if all of the other tests have been met, when such use was contentious.
7. To put this in context it is important to understand the background to the application. the application related to land in Weymouth in Dorset where the landowners had sought for many years to ward off trespass by erecting signs, mending fences and warning off trespassers. The signs and fences were continually ripped down by persons unknown and local people continued to trespass. Eventually, the landowners simply gave up trying to prevent trespass and consequently, several years later, an application to register the land

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<sup>1</sup> [2010] EWHC 3045 (Ch)

as a Town or Village Green was successful. New landowners challenged the registration through the Courts on the basis use was not 'as of right' for the full twenty years because the qualifying use of the land was contentious

8. The Judge accepted this argument. He further expanded his view that use of land is not 'as of right' when the owner of the land is doing everything consistent with his means and proportionately to the user, to contest and to endeavour to interrupt use. In other words, when such use is contentious. He therefore quashed the registration on that basis.

### **Commons Act 2006 – Pilot Project**

9. The County Council continues to work on the review of the Registers of Common Land and Village Greens required by the pilot project. A number of issues have been identified for resolution and these are now being progressed. These are covered in a separate report to the Regulation Committee at this meeting.

### **Recommendation**

10. I RECOMMEND Members receive this report for information.

### **Background documents:**

Appendix A – Schedule of Village Green applications

### **Contact Officer:**

Chris Wade

Public Rights of Way Principal Case Officer

Tel: 01622 221511

**APPENDIX A:  
Schedule of Village Green applications**

**Applications resolved by the Regulation Committee since last report  
(9<sup>th</sup> September 2010)**

<b>Description</b>	<b>Parish</b>	<b>Member(s)</b>	<b>Outcome</b>
Barton Playing Field	Canterbury	Mr. M. Northey	REJECTED on 14/09/2010
Ryarsh Recreation Ground	Ryarsh	Mrs. S. Hohler	ACCEPTED and registered as VG248 on 14/09/2010
The Glen	Minster-on-Sea	Mr. A. Crowther	ACCEPTED and registered as VG249 on 14/09/2010
Brittains Common	Sevenoaks	Mr. J. London	ACCEPTED and registered as VG250 on 14/09/2010
The Old Bowling Green at Montefiore Avenue	Ramsgate	Mr. B. Hayton Mr. R. Bayford	REJECTED on 19/10/2010
Land at Sherwood Lake	Tunbridge Wells	Mr. K. Lynes	ACCEPTED and registered as VG251 on 26/10/2010
Former Council Offices site	Cranbrook	Mr. R. Manning	REJECTED on 26/10/2010
Brickfields, off Mill Lane	Bridge	Mr. M. Northey	REJECTED on 30/11/2010

**Forthcoming Public Inquiries**

<b>Description</b>	<b>Parish</b>	<b>Member(s)</b>	<b>Details</b>
none			

**Outstanding applications to be resolved**

<b>Description</b>	<b>Parish</b>	<b>Member(s)</b>	<b>Status</b>
Round Wood at Walderslade	Boxley	Mr. P. Carter	On hold at applicant's request
Broadstairs Cricket Ground	Broadstairs	Mr. B. Hayton Mr. R. Bayford	To be referred to Member Panel for decision in February
St Andrew's Gardens	Gravesend	Mr. B. Sweetland Mr. J. Cubitt	Awaiting further legal advice
Land adjacent to Barnes Car Park	Margate	Mr. R. Burgess	To be referred to Member Panel for decision in February
The Downs	Herne Bay	Mrs. J. Law	Under investigation
The Allotment Field, Barton Estate	Canterbury	Mr. M. Northey	To be referred to Member Panel for decision in February
Grasmere Pastures	Whitstable	Mr. M. Harrison Mr. M. Dance	To be referred to Member Panel for decision in February
Land at High Street	Chiddingstone	Mr. P. Lake	To be referred to Member Panel for decision in February
Benacre Wood	Whitstable	Mr. M. Harrison Mr. M. Dance	To be referred to Member Panel for decision in February
Land at Princes Parade	Hythe	Mr. C. Capon	Under investigation
Land at Hartley Woods	Hartley	Mr. D. Brazier	Under investigation
Land known as Long Field at Angley Road	Cranbrook	Mr. R. Manning	To be referred to Member Panel for decision in February
Dawbourne Wood	Tenterden	Mr. M. Hill	Under investigation

Gighill Green	Larkfield	Mrs. T. Dean	To be referred to Member Panel for decision in February
Land at Westwell Lane	Westwell	Mr. R. King	Under Investigation
Land at Mill Lane	Preston	Mr. L. Ridings	To be referred to Member Panel for decision in February
Seaton Meadow	Wickhambreaux	Mr. M. Northey	Awaiting investigation
Land at Woodland Road	Lyminge	Ms. S. Carey	Awaiting investigation
Land known as Fisherman's Beach	Hythe	Mr. C. Capon	Awaiting investigation
Land at Mountfield Road	Meopham	Mr. M. Snelling	Awaiting investigation
Playing Field	Marden	Mrs. P. Stockell	Awaiting investigation
Scrapsgate Open Space	Minster-on-Sea	Mr. A. Crowther	Awaiting investigation



## **Proposals arising from the review of the Registers of Common Land and Town or Village Greens**

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A report by the Director of Environment and Waste to Kent County Council's Regulation Committee on Tuesday 25<sup>th</sup> January 2011.

### **Recommendation:**

**I recommend that the errors identified as a result of the review of the Registers of Common Land and Town or Village Greens are dealt with accordingly and that proposals are initiated under section 19 of the Commons Act 2006 to seek to rectify these errors.**

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### **Introduction**

1. Members will be aware of the ongoing review of the Registers of Common Land and Town or Village Greens as part of the pilot project for the implementation of Part I of the Commons Act 2006. As part of this review, Officers have identified a number of errors and anomalies in the Registers which now require correction.
2. Some of the anomalies identified are complicated and require further, more detailed, investigation. However, there are certain issues which have arisen as a result of errors made by the Commons Registration Authority, particularly in relation to transcribing application plans onto the Register maps. These issues are much more clear cut and should be rectified in order to ensure that the information contained in the Registers remains as accurate as possible.

### **The law**

3. The Commons Act 2006 has provided a range of powers to Commons Registration Authorities which allow for the Registers to be amended in a range of circumstances.
4. Section 19 of the 2006 Act states that a Commons Registration Authority may amend its Register of Common Land and Town or Village Greens for any of the following purposes:
  - correcting a mistake made by the Commons Registration Authority in making or amending an entry in the Register;
  - correcting any other mistake which would not affect the extent of the registered land or a right of common;
  - removing a duplicate entry from the Register;
  - updating any contact details contained in the registers; or
  - updating any entry to take account of accretion or diluvium.
5. Section 19 further provides that an amendment may be made by a Commons Registration Authority on its own initiative or on the application of any person. This means that, where appropriate, the County Council has the power to initiate an amendment of the Registers (known as a "proposal") without having to wait for an application to be made by a member of the public.
6. Proposals are dealt with in the same way as an application, and are required to undergo all of the usual advertising and formal consultation processes.

## **The proposals**

7. There are currently five proposals which it is proposed to resolve initially and others will follow at a later stage once further research has been carried out. All of the current proposals involve boundary errors arising from the transcription of application plans to the Register map. More specific details on each case are attached at the Appendices to this report.
8. Three of the proposals involve removing land from the Registers (see **Appendix A, B and C**) where land has been registered in error.
9. One proposal involves adding land to the Register (see **Appendix D**) where the original application intended for the land to be registered, but it was mistakenly omitted from the registration due a misinterpretation of the base mapping.
10. One proposal involves modifying the register so as to remove part of an existing registration and to register an alternative piece of land (see **Appendix E**). In this case the Register map does not accurately reflect the original application, or indeed the current position on the ground, and ought to be amended as such.

## **Determination of proposals**

11. In general, proposals are either determined by the County Council in its capacity as the Commons Registration Authority or, alternatively, they may sometimes be referred to the Planning Inspectorate for determination.
12. The circumstances in which a proposal must be referred to the Planning Inspectorate for determination are set out at Regulation 27 of the Commons Registration (England) Regulations 2008. One of those circumstances is where a proposal is made under section 19 of the 2006 Act and seeks to add or remove land from a Register.
13. The cases currently under consideration (as set out above and in the appendices) all fall within the remit of section 19 of the Commons Act and all involve either the removal of land from or the addition of land to the Register. Therefore, they would all need to be referred to the Planning Inspectorate, who would take the final decision with regard to any amendment of the Register.

## **Recommendation**

14. I recommend that the errors identified as a result of the review of the Registers of Common Land and Town or Village Greens are dealt with accordingly and that proposals are initiated under section 19 of the Commons Act 2006 to seek to rectify these errors.

## **Background documents:**

Appendix A – Common Land unit number CL28 at Lamberhurst  
Appendix B – Common Land unit number CL158 at Dartford  
Appendix C – Common Land unit number CL159 at Dartford  
Appendix D – Village Green unit number VG165 at Brasted  
Appendix E – Village Green unit number VG42 at Addington

## **Contact Officer:**

Melanie McNeir, Countryside Access Service, Tel: 01622 221628

**COMMONS ACT 2006**

**PROPOSAL UNDER SECTION 19 TO AMEND AN ERROR BY THE COMMONS  
REGISTRATION AUTHORITY**

**CL28 AT LAMBERHURST**

The Kent County Council is seeking to initiate a proposal under section 19(2)(a) of the Commons Act 2006 to amend the Register of Common Land for unit number CL28 at Lamberhurst on the following grounds:

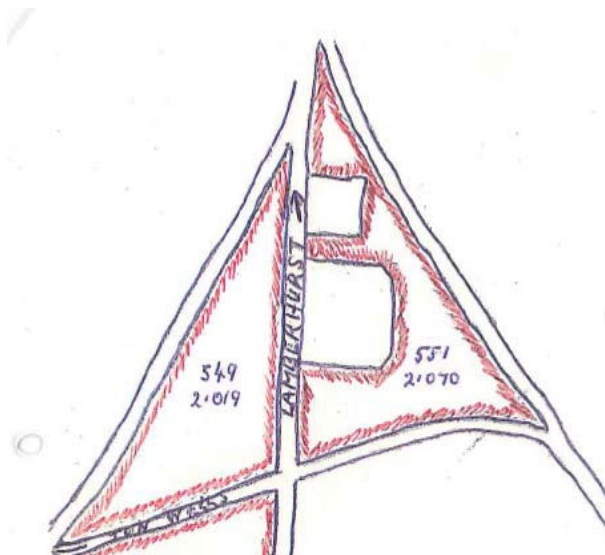
Description of proposal

The proposal is to delete from the Register an area of approximately 600 square metres of registered Common Land from unit number CL28 at Lamberhurst which forms part of the garden of the property known as 'Manor Down'.

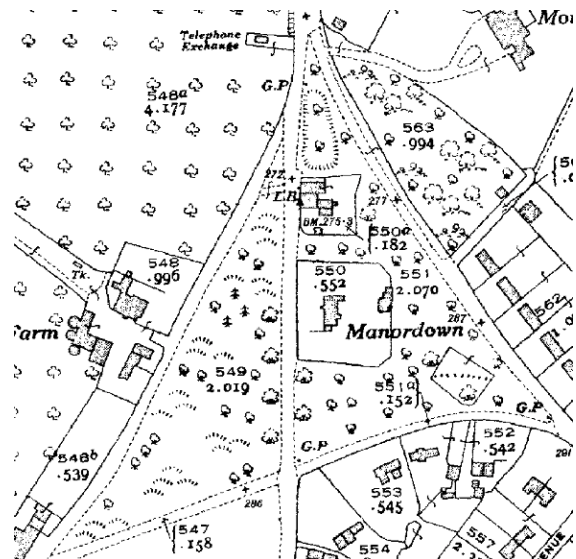
Justification for proposal

The reason for the proposal is that this land was registered as Common Land in error when the original processes for compiling the Registers of Common Land were undertaken during the 1970s. This error is clearly visible when comparing the original application plan with the map accompanying the Register of Common Land. The garden of the property known as 'Manor Down' was excluded from the original application plan and it was not the intention of the applicant that it be registered as Common Land. For this reason, there is no basis for this land being registered as such and it should now be removed from the Register of Common Land.

**CL28 at Lamberhurst: proposal under section 19 of Commons Act 2006**



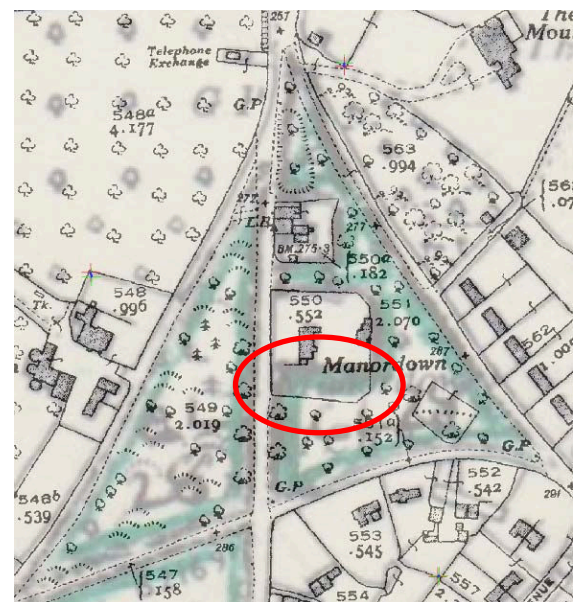
**1 - application plan**



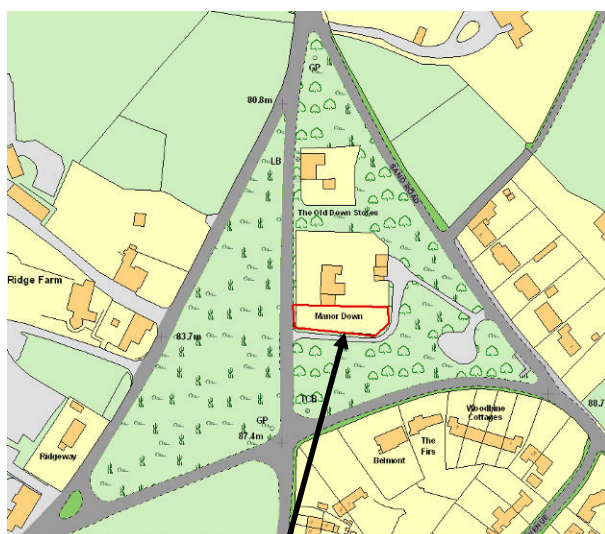
**2 - Fourth edition OS map**



**3 - Register plan**



**4 - Register plan overlaid by OS map**



**Area of land to be removed from the Register**

**COMMONS ACT 2006**

**PROPOSAL UNDER SECTION 19 TO AMEND AN ERROR BY THE  
COMMONS REGISTRATION AUTHORITY**

**CL158 AT DARTFORD HEATH**

The Kent County Council is seeking to initiate a proposal under section 19(2)(a) of the Commons Act 2006 to amend the Register of Common Land for unit number CL158 at Dartford Heath on the following grounds:

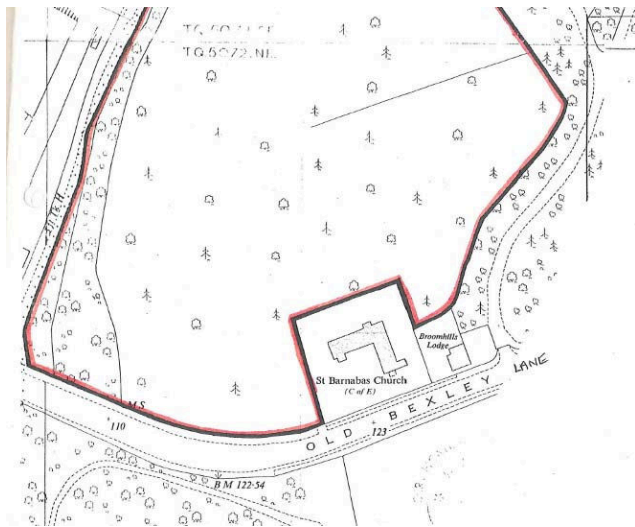
Description of proposal

The proposal is to delete from the Register an area of approximately 620 square metres of registered Common Land from unit number CL158 at Dartford Heath which forms part of the grounds of the property known as 'The Brethrens Meeting Room' (previously known as St. Barnabas Church).

Justification for proposal

The reason for the proposal is that this land was registered as Common Land in error when the original processes for compiling the Registers of Common Land were undertaken during the 1970s. This error is clearly visible when comparing the original application plan with the map accompanying the Register of Common Land. The Register Plan shows registered Common Land in the grounds of the property known as 'The Brethrens Meeting Room', which does not comply with the original (and accepted) application plan. It was not the intention of the applicant that it be registered as Common Land and for this reason there is no basis for this land being registered as such and it should now be removed from the Register of Common Land.

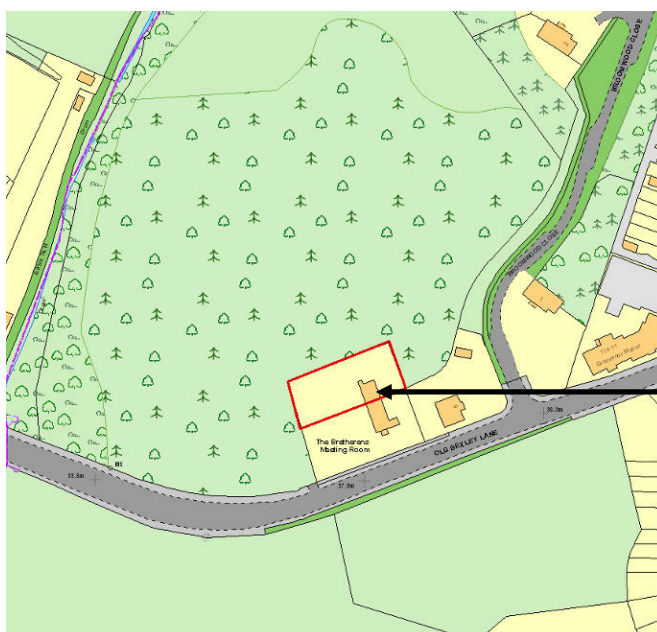
**CL158 at Dartford: proposal under section 19 of the Commons Act 2006**



**1 – application plan showing intended boundary around St. Barnabas Church**



**2 – extract from Register plan**



**Area of land to be removed from Register**



**COMMONS ACT 2006**

**PROPOSAL UNDER SECTION 19 TO AMEND AN ERROR BY THE  
COMMONS REGISTRATION AUTHORITY**

**CL159 AT OAKFIELD LANE, DARTFORD**

The Kent County Council is seeking to initiate a proposal under section 19(2)(a) of the Commons Act 2006 to amend the Register of Common Land for unit number CL159 at Dartford on the following grounds:

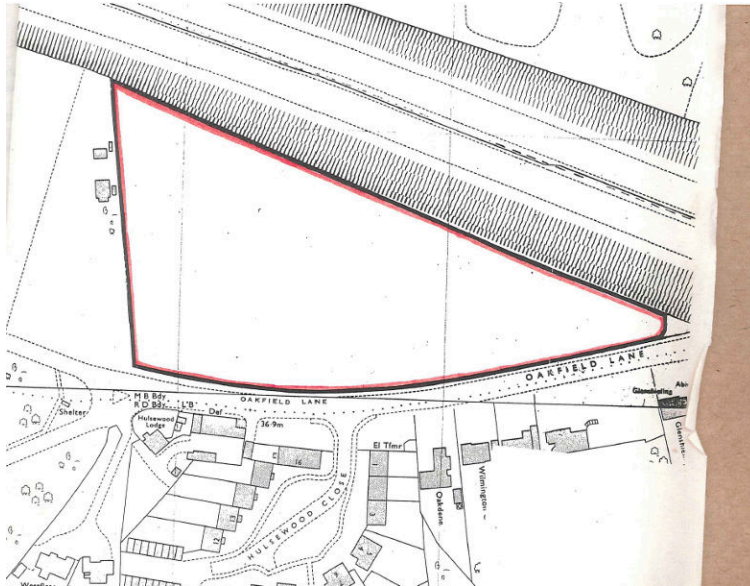
Description of proposal

The proposal is to delete from the Register an area of approximately 2.5 acres (1 hectare) of registered Common Land from unit number CL159 at Oakfield Lane, Dartford.

Justification for proposal

The land became Common Land by virtue of a Deed of Exchange dated 30<sup>th</sup> March 1983 as authorised by the Ministry of Transport Highways Compulsory Purchase Order (No.21) (London – Canterbury – Dover Trunk Road, Dartford Diversion) 1968. An application was made by Dartford Borough Council on 22<sup>nd</sup> March 1984, under Section 13 of the Commons Registration Act 1985 to effect this change on the Register. However, an error was made in transcribing the map accompanying the Deed of Exchange onto the Register of Common Land, which therefore does not comply with the Deed of Exchange plan. It was not the intention of the Deed of Exchange that this piece of land be registered as Common Land and for this reason there is no basis for this land being registered as such and it should now be removed from the Register of Common Land.

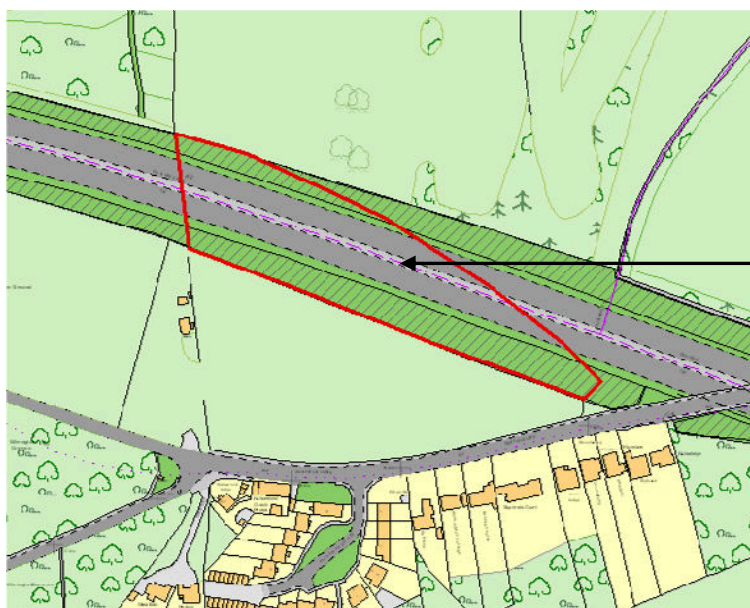
**CL159 at Dartford: proposal under section 19 of the Commons Act 2006**



**1 – application plan  
showing intended boundary  
to the south of the A2 trunk  
road**



**2 – extract from Register  
plan**



**Area of land to be  
removed from Register**



**COMMONS ACT 2006**

**PROPOSAL UNDER SECTION 19 TO AMEND AN ERROR BY THE COMMONS  
REGISTRATION AUTHORITY**

**VG165 AT BRASTED**

The Kent County Council is seeking to initiate a proposal under section 19(2)(a) of the Commons Act 2006 to amend the Register of Village Greens for unit number VG165 at Brasted on the following grounds:

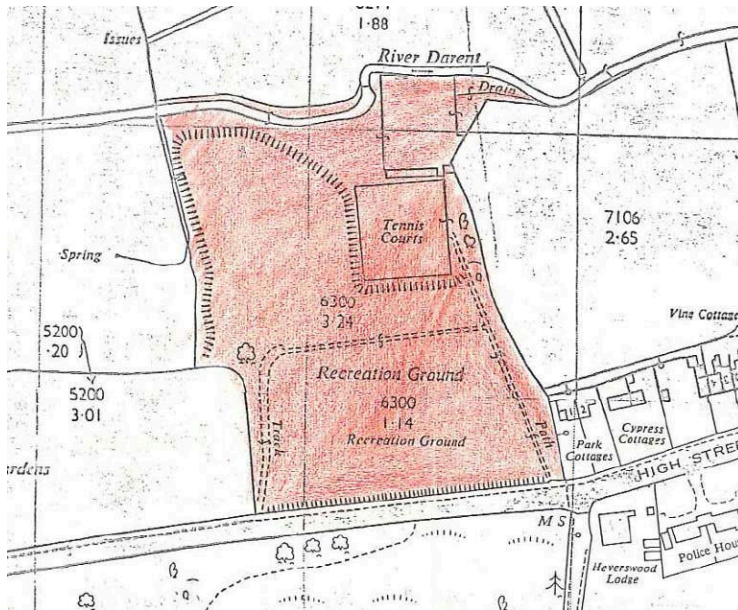
Description of proposal

The proposal is to add to the Register an area of approximately 430 square metres of unregistered land to unit number VG165 which forms part of the Recreation Ground at the High Street in Brasted.

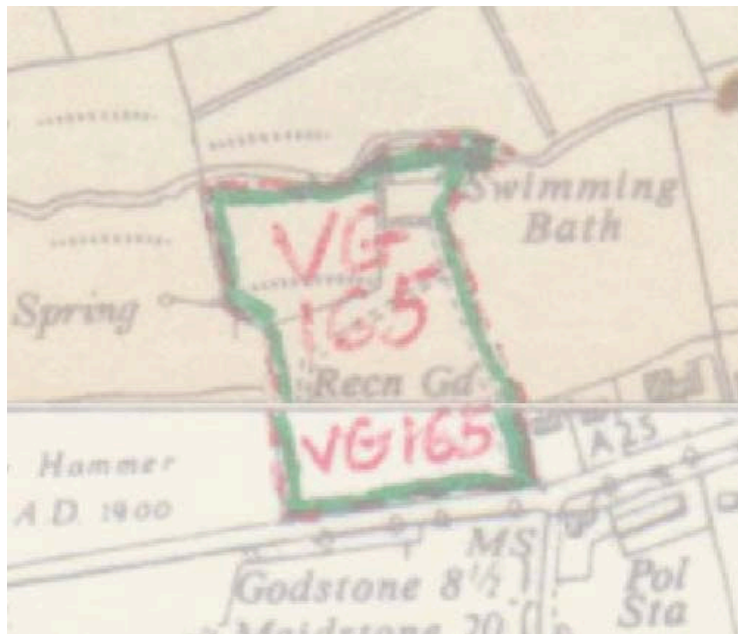
Justification for proposal

The reason for the proposal is that this land was mistakenly omitted when the original processes for compiling the Registers of Village Greens were undertaken during the 1970s. This error is clearly visible when comparing the original application plan with the map accompanying the Register of Village Greens. This part of the Recreation Ground was included on the original application plan and it was the intention of the applicant that it be registered as Village Green. For this reason, there is a firm basis for this land being registered as such and it should now be added to the Register of Village Greens.

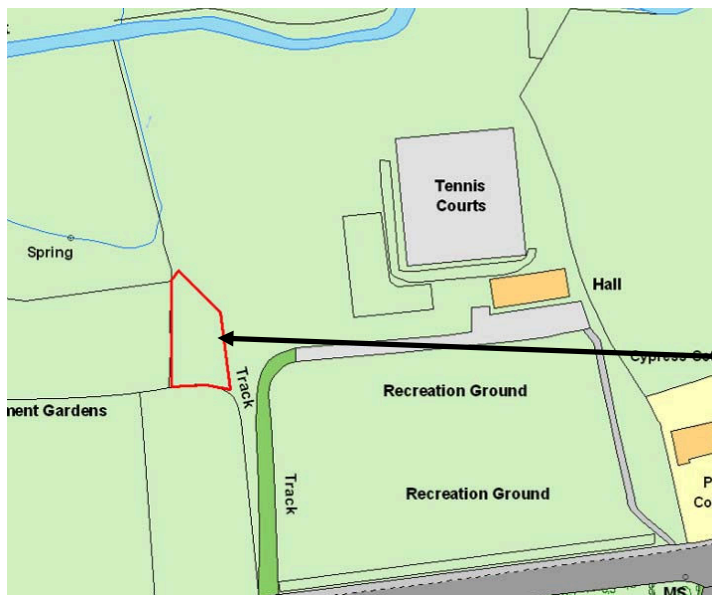
**VG165 at Brasted: proposal under section 19 of the Commons Act 2006**



**1 – application plan  
showing intended boundary**



**2 – extract from Register  
plan**



**Area of land to be  
registered as Village  
Green**

**COMMONS ACT 2006**

**PROPOSAL UNDER SECTION 19 TO AMEND AN ERROR BY THE COMMONS  
REGISTRATION AUTHORITY**

**VG42 AT ADDINGTON**

The Kent County Council is seeking to initiate a proposal under section 19(2)(a) of the Commons Act 2006 to amend the Register of Village Greens for unit number VG42 at Addington on the following grounds:

Description of proposal

The proposal is to add to the Register an area of land of approximately 85 square metres to unit number VG42 which forms part of Addington Village Green at Addington.

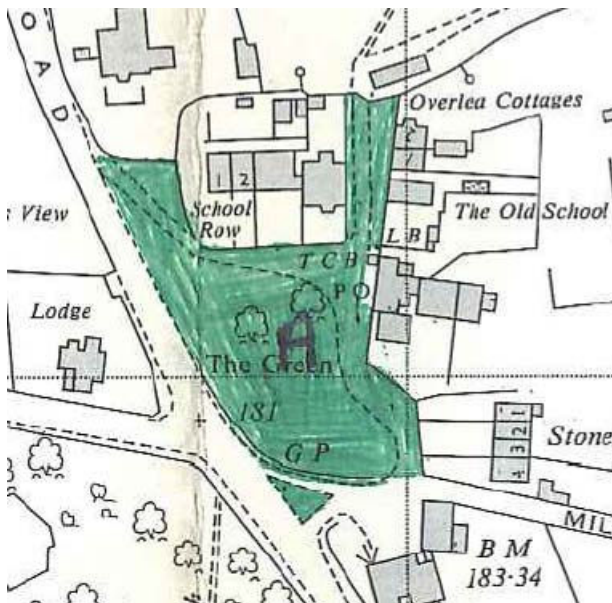
The proposal is also to delete from the Register an area of approximately 75 square metres of registered land from unit number VG42 which forms part of Addington Village Green at Addington.

Justification for proposal

The reason for the proposal is that this land comprising 85 square metres mistakenly omitted when the original processes for compiling the Registers of Village Greens were undertaken during the 1970s. This error is clearly visible when comparing the original application plan with the map accompanying the Register of Village Greens. This part of the Village Green was not included on the original application plan and it was the intention of the applicant that it be registered as Village Green. For this reason, there is a firm basis for this land being registered as such and it should now be added to the Register of Village Greens.

The area to be deleted was registered as Village Green in error when the original processes for compiling the Registers of Village Greens were undertaken during the 1970s. This error is clearly visible when comparing the original application plan with the map accompanying the Register of Village Greens. This part of the Village Green was included on the original application plan and it was not the intention of the applicant that it be registered as Village Green. For this reason, there is no basis for this land being registered as such and it should now be deleted from the Register of Village Greens.

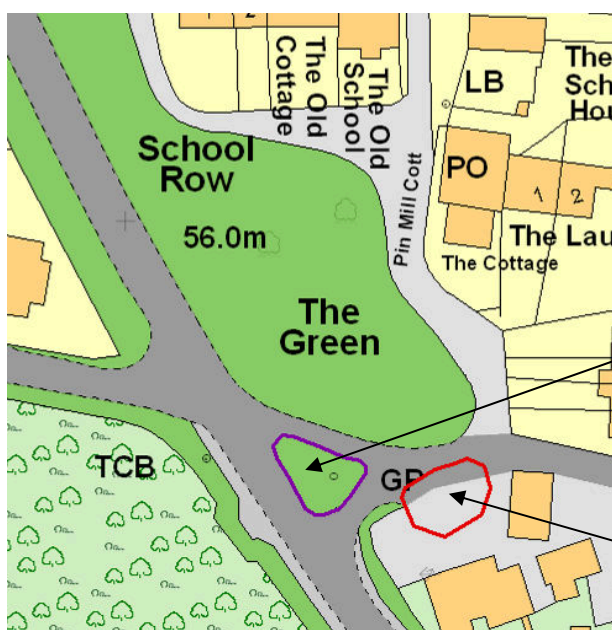
**VG42 at Addington: proposal under section 19 of the Commons Act 2006**



**1 – application plan showing intended boundary**



**2 – extract from register plan**



**Area of land to be registered as Village Green**

**Area of land to be removed from the Register**

## Update on Planning Enforcement Issues

Report by Head of Planning Applications Group to the Regulation Committee on 25<sup>th</sup> January 2011.

Summary: Update for Members on planning enforcement matters.

Recommendation: To endorse the actions taken or contemplated on respective cases.

Local Member: Given by case in Appendices 1 to 3

Unrestricted

### Introduction

1. This report provides an update on enforcement and monitoring work carried out by the Planning Applications Group since the 9<sup>th</sup> September 2010 Regulation Committee.
2. Summary schedules of all current cases have been produced (see Appendices 1 and 2). They cover unauthorised breaches of planning control and those occurring on permitted sites, primarily waste-related. The emphasis is on live and active cases along with those resolved between Meetings.

### Report Format

3. Cases have been taken from the appended schedules and expanded reports produced. These in turn are presented under the following categories:
  - Achievements / successes [including measurable progress on existing sites]
  - New cases, especially those requiring Member endorsement for action
  - Significant on-going cases
  - Other cases / issues of interest and requests by Members
4. Members may wish to have verbal updates at Committee on particular sites from the schedules, (ideally with prior notice) or reports returned to the next Meeting. The report continues to give details of general site monitoring and progress on chargeable monitoring for minerals development.

### Meeting Enforcement Objectives

5. Public sector enforcement in its widest sense, including planning control, needs to be carried out in a seamless and effective way. Close working relationships are required between this Authority, District Councils and the Environment Agency. Members and in particular the Chairman, have helped in forging new links and in improving joint working arrangements.
6. Nevertheless, I reported to the last Meeting on a particular problem with District Councils. A number have been failing to consult us in cases where there is a clear County Council interest. I cited the examples of planning applications made to district councils on County controlled sites including housing proposals on scrap yards and re-profiling schemes on former landfill sites.

## **Update on Planning Enforcement Issues**

7. To ease the situation, I have been in dialogue with Planning Managers at various district councils to help improve the flow of information and to reach a better understanding of procedure. As part of that work, I have assisted in a number of difficult district enforcement cases by offering advice on strategy and on the controls and powers available. This transfer of experience and expertise has been well received and is one of the ways in my view towards better working relationships within the planning enforcement field. I have expanded upon this work in paragraphs 33 to 41 of this report.
8. A further initiative in the context of the Localism Bill has been attempts by Members and officers to seek improved planning enforcement powers from the new Coalition Government. Both Civil Servants within DCLG and Ministers themselves have been invited to consider our proposals. There is a separate report on this subject under Item 8 of these papers.
9. The 'Achievements / Successes' section below contains further enforcement successes. I should particularly like to commend the 'Unit 10', Detling Airfield case as a further example of a complete solution to a challenging situation at minimal cost.
10. Since the last Meeting resources have been focussed on 4 sites where formal enforcement action has been taken, 3 cases where investigations are underway and a further 4 cases have been satisfactorily progressed. Amongst formal monitoring visits on permitted sites there have been 27 chargeable and 4 non-chargeable visits.

### **Achievements / Successes [including measurable progress on sites]**

#### **Unit 10, Detling Airfield, Detling (Member: Ms J Whittle)**

11. I originally reported this case as an exempt item at the 26 January 2010 Regulation Committee meeting, following concerns by the landowner over alleged breaches by the lessee on his own land. It involved significant volumes of mixed construction spoil being imported on to the site, stockpiled and then processed through crushing and screening plant, for subsequent sale and distribution (see Appendix 1, Schedule 1, No. 4).
12. The service of a Planning Contravention Notice and an initial site meeting brought about a cessation of the crushing and screening activities. The operators agreed to remove the deposited waste stockpiles and provided a timetable and plans to progress removal and restoration of the site. That timetable has now been honoured.
13. Full compliance was achieved in November 2010, with the site cleared of all unauthorised materials and restored. The site is now being regularly monitored to ensure that there is no recurrence of the previous alleged breaches. For Members information, the operators are in the process of leaving Kent and transferring their business to a new site in the Greater London area.
14. Direct and decisive intervention has been the route to success in this case. The alleged breaches were quickly halted and the site restored, without the need for extensive formal action. That has saved the cost and diversion from other enforcement cases of considerable County Council resources.

## Update on Planning Enforcement Issues

15. I commend this case as a further example of '*demonstrated savings*'; where enforcement outcomes are achieved without the need for related public spending.

### **Red Lion Wharf, Northfleet (Members: Leslie Christie / Harold Craske)**

16. This case concerns the unauthorised importation of significant quantities of waste wood for shredding (see Appendix 1, Schedule 1, No. 2). The site resides within Red Lion Wharf, Northfleet. The area is owned by SEEDA and is the subject of regeneration proposals, formed within the 'Northfleet Embankment Masterplan'.
17. Members' have previously resolved to reserve enforcement action against the wood stockpile to allow for outlets to be found for its constructive re-use. That has failed to provide a direct solution but has served to attract a specialist wood processing company to the site.
18. A temporary 3 year planning permission has recently been granted for a wood shredding yard, supported by a Section 106 Planning Agreement. The existing waste stockpile will be absorbed, processed and removed as an integral part of the scheme. That in turn will assist in securing regeneration development for the area.
19. A planning solution has been found to the alleged breaches on site. It is an example of good practice and includes a tight control regime designed to safeguard the amenity of local people.

### **Four Gun Field, Otterham Quay Lane, Upchurch (Member: Keith Ferrin)**

20. Members are familiar with this long standing case of alleged waste-related activities on a former lawful brickfield site. Summary particulars are given under Appendix 1, Schedule 1, No. 7. A full exempt report forms Item 12 of these papers.
21. Of particular note is that the site is currently quiet and that the owner / occupiers appeal in the High Court against the Planning Inspector's decision has itself been dismissed. The judge made no change or amendment to the County Council's Enforcement Notice which was central to the case for scrutiny at the hearing. An application for leave to appeal the judgement before the Appeal Courts has yet to be determined.

### **Computerised planning application system**

22. The new IT system within the planning and enforcement service is now live. This new system is more capable than the previous system of meeting the expectations of a modern enforcement service.

## **New Cases, especially those requiring action / Member support**

## **Update on Planning Enforcement Issues**

23. Three new cases have arisen since the last Meeting, concerning Seaview Farm, Stockbury; Keith Cornell Waste Paper Ltd, Lympe and Borough Green Landfill Site, Wrotham Road, Wrotham. These alleged contraventions have been investigated and addressed.

### **Seaview Farm, Southstreet Road, Stockbury (Member: Ms J Whittle)**

24. This case, concerns the importation, stockpiling and storage of mixed waste materials on agricultural land. It was reported to me by Stockbury Parish Council. From local enquiries I established that waste materials were in the process of being removed from adjacent land at Rumstead Lane, Stockbury, under the control of a local skip operator. This action was prompted by the Environment Agency (EA), requiring removal to a lawfully designated site.
25. This apparent secondary breach was made known to the EA, as they held the enforcement lead. They immediately corrected the breach and I have briefed Stockbury Parish Council and the local County Member Jenny Whittle on the action taken. There has been no recurrence (see Appendix 1, Schedule 1, No. 3).

### **Keith Cornell Waste Paper Ltd, Lympe Industrial Park, Lympe (Member: Ms S Carey)**

26. This case was brought to my attention by Shepway District Council in October 2010 following complaints by local residents. The site is located at the south-western extremity of Lympe Industrial Park and shares a common perimeter fence and boundary with existing dwellings. It employs around 20 people, recycling mainly waste paper but also some plastics and bottles. The main bulk of the imported waste paper is stored against the perimeter fence in preparation for sorting and shredding inside the site building. Once processed the paper and plastic materials are baled and exported from the site. The bottles and glassware are transferred by metal container.
27. The main complaints concern excessive noise, overstacking and potential fire risk from large volumes of waste paper stored against the common perimeter fence. The site has been investigated by both Environmental Health from Shepway District Council (SDC) and the Environment Agency, who have exempted the site from waste permitting controls. The presence of these officers on site has given only temporary relief to local residents.
28. Shepway District Council originally granted planning permission for nursery units on the site but with no effective controls or conditions to address the concerns raised by the local community. No County Council planning permission exists. The operator claims that the 'blanket' planning permission from SDC, includes a B2 (Industrial) Use, which by extension allows for his operation without the need for further permission. I have disputed this, even given the unfortunate planning background. I have explained to the operator's planning agent that the County Council takes a determined stand on all such cases and it would be wise on balance to restrain the use, pending the outcome of a



## **Update on Planning Enforcement Issues**

retrospective planning application to this Authority. To his credit, the operator has committed to both.

29. I have kept, the local County Member Susan Carey informed and through her, the local Ward Member. On this occasion, in view of the strained local circumstances and levels of Member activity I have also kept the Chairman Mike Harrison informed.
30. The operator has been further advised that failure to adopt this course of action will result in the service of an Enforcement Notice, for which I now seek Member endorsement on a contingency basis. A summary of the case is reported at Appendix 1, Schedule 1, No. 6 and should in my view also be recorded in its own terms as an informal action achieved since the last Regulation Committee Meeting.

### **Cemex Ltd, Borough Green Landfill Site, Wrotham Road, Wrotham**

31. I have given a self-contained summary of this 'mud-on-the-road' incident Appendix 2, Schedule 2, No. 3. The situation was dealt with quickly and decisively and there has been no reported recurrence.

## **Significant on-going cases**

### **Deal Field Shaw, Charing (Member: Richard King)**

32. The restoration of this acquired landfill site at Charing, near Ashford is summarised under Appendix 1, Schedule 1, No.1. It is also the subject of a separate report under Item 9 of these papers. I have usually reported confidentially to Members on this matter but the case has advanced sufficiently to allow a report in the open papers, which will also serve as a briefing and update for neighbouring residents.

## **Other cases / issues of interest and requests from Members**

33. Over several Committee Meetings, I have been reporting on a lack of consultation by District Councils towards this Authority in cases and actions which impinge on our interests. I have referred to this issue earlier under paragraphs 7 and 8 of this report. Although all of the cases are on balance district matters, I should like to give Members an idea of the type of discussions that have been taking place with our district colleagues and the input and influence that we have had towards solutions within their areas. This type of work is carried out in the background to our main County Council cases. It is understated but important work in steering solutions from our strategic experience and specialist expertise in bulk material handling and waste matters.
34. Our input is handled efficiently but the work is still time-consuming. Members will note that on a number of occasions, some district councils are passing cases to us in error or serious and preventable situations are occurring for want of consulting us on specified cases, as they are required to do. The situation is improving given extended efforts on our part and a meeting of minds with key planning managers in the districts.

## **Update on Planning Enforcement Issues**

35. Dover District Council for instance, approached us recently for advice on four separate district enforcement cases. They each involved the ancillary use of waste materials within the alleged breaches. I gave extended enforcement advice at a meeting at their offices attended by their Head of Development Control, Planning Enforcement Team Manager and their Planning Enforcement consultant. The cases were retained by them and I believe that a new impetus has been found towards their resolution.

### **Sleepy Hollow Farm, Seasalter Lane, Whitstable**

36. Canterbury City Council (CCC) were processing a planning application for the land raising of a former municipal tip, the subject of a County Council Enforcement Notice prohibiting any further importation of waste materials onto the site. We had not been consulted and on being advised of that and the full planning background, CCC confirmed that the application was apparently to be withdrawn.

### **Staplehurst Golf Course, Craddocks Lane, Staplehurst**

37. The volumes of waste materials that were destined for this Golf Course site were so great that the County Council's officers drew the Borough Council's attention to DCLG advice concerning the possibility of a *county matter* development, advising the Borough Council to be satisfied that the volumes of material involved were reasonably necessary for the development and that the DCLG advice had been met. On being advised of this, Maidstone Borough Council confirmed our reading of the situation to the applicant and a withdrawal of the application was invited in favour of revised proposals which "...considerably reduce the extent of imported waste materials with supporting justification'.

### **Pelistry, Hill Green Road, Stockbury**

38. This case was referred to me by Maidstone Borough Council as an unauthorised waste-led activity. It proved to be new operational development for the creation of a tennis court, which in planning terms falls to the Borough to control or enforce.

### **Marwood House, Crockenhill**

39. This case was referred to me by Sevenoaks District Council as waste materials were being imported as part of a residential caravan park development. I investigated but the reported activity was incidental to the main district development. I withdrew from the case at that point but I brought the matter to the attention of the Environment Agency as the site is already permitted and monitored by them.

### **Willow Farm, Ospringe**

40. In this case Swale Borough Council (SBC) sought advice from me on a proposed scheme received by them to import and deposit waste materials to infill a hollow on agricultural land. A subsequent site meeting established that development would also include further land-raising and the creation of earth bunds alongside the M2 motorway.

## **Update on Planning Enforcement Issues**

The developer was dissuaded from pursuing the development at the time but should it be raised again I shall need to agree jurisdiction with SBC.

### **Matts Hill Farm, Hartlip**

41. Swale Borough Council identified deposits of tarmac on the land during a site visit in relation to a retrospective application for an open storage use. The tarmac had allegedly been deposited several years ago by a Medway Council Highway contractor. Advice was sought in relation to its removal. I referred SBC to Medway Council, as they retained 'cradle-to-grave' responsibility for the waste through the contract chain (and clauses within each contracts), regardless of the fact that the unauthorised tipping took place in SBC's area. Failing that, I advised that the Environment Agency had powers of removal, given the potential for ground water contamination.

## **Monitoring**

### **Monitoring of permitted sites and update on chargeable monitoring**

42. In addition to our general visits to sites as a result of planning application work, we also undertake routine visits to formally monitor sites. Since the last Regulation Committee, we have made a further 27 chargeable monitoring visits to mineral and waste sites and 4 non-chargeable visits to sites not falling within the chargeable monitoring regime.

### **Resolved or mainly resolved cases requiring monitoring**

43. Alongside the chargeable monitoring regime there is also a need to maintain a watching brief on resolved or mainly resolved enforcement cases which have the potential to reoccur.
44. Cases are periodically removed when the situation on site has been stabilised; restoration or acceptable restoration has been achieved, a district or Environment Agency (EA) remit confirmed (or with action being a realistic possibility by them). Another occasion is where a planning application would address the various issues and there is the realistic prospect of one being submitted. Cases then go onto a 'reserve' data base, with an in-built monitoring commitment; ready to be returned to the Committee's agenda should further enforcement issues emerge or a positive planning solution becomes available.
45. There is a running list of sites which fall within this category, against which priorities are drawn and enforcement monitoring checks are made.

## **Conclusion**

46. The cases presented in this report are of significance in their own right but also illustrate some underlying themes. I have expanded upon the consultation issue with district councils to give Members an insight into the work which is routinely carried out, behind the County Council's own enforcement cases. Progress is being made in streamlining that work with the districts. Another key aspect is the targeted lobbying of Government

## Update on Planning Enforcement Issues

by officers and Members, in the pursuit of more meaningful planning enforcement powers. Among the achievements and successes is a resolved case on Detling Airfield with further demonstrated savings and the prospect of the same at Red Lion Wharf, Northfleet. These are examples of creative and cost-effective solutions to very difficult planning enforcement problems.

### Recommendation

47. I RECOMMEND that MEMBERS:

- (i) ENDORSE the actions taken or contemplated on the respective cases set out in paragraphs 5 to 41 above and those contained within Schedules 1 and 2 of Appendices 1 and 2.

Case Officers: Robin Gregory

01622 221067

Background Documents: see heading

**Regulation Committee – 25<sup>th</sup> January 2011**  
**Active Enforcement Cases**

***Appendix 1***

**Schedule 1: Contraventions on (part) unauthorised sites**

	<b><u>Site &amp; Case Reference</u></b>	<b><u>Alleged Breach</u></b>	<b><u>Objectives / Actions</u></b>	<b><u>Progress</u></b>	<b><u>Notes / Remarks</u></b>
1	<b>Ashford</b>  DC3/AS/03/COMP/0090 Shaw Grange, Charing  (Member: Richard King)	Previous multiple breaching of landfill permissions, Enforcement Notices and High Court Injunctions.	To secure restoration of the site in the public interest.	The County Council is directly resolving the restoration issues on site.	Progress on the site and an outline of remaining works / maintenance are given within Item 9 of these papers
2	<b>Gravesham</b>  DC3/GR/COMP/0013 Red Lion Wharf Crete Hall Road Northfleet  (Member Leslie Christie / Harold Craske)	Importation of waste wood, stockpiling and shredding.	To cease importation and secure removal of the high residual stockpile of waste wood.	SEEDA as the landowner has attracted a specialist firm to the site. A 3 year temporary planning permission has now been granted (with S106 Agreement), for removal of the waste wood and recovery of the site's development potential.	The case is more fully reported under paragraphs 16 to 19 of Item 7 of these papers.

	<u>Site &amp; Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
	<b>Maidstone</b>				
3	DC3/MA/10/COMP/A01 Seaview Farm, Southstreet Road, Stockbury  (Member: Ms Jenny Whittle)	Alleged depositing and waste materials on agricultural land	To verify and arrest this apparent breach	This activity arose as a result of the EA requiring a local skip operator to remove deposited waste materials from another nearby site. The materials were brought to this site instead.	Enforcement action on the part of the EA has resulted in removal of the waste materials and restoration of the land.
4	DC3/MA/04/COMP/0010 Unit 10, (Blu-3 UK) Detling Airfield, Detling, Maidstone  (Member: Ms Jenny Whittle)	Alleged processing of imported waste materials, using crushing and screening plant.	To arrest the breach.	The operators voluntarily agreed under close negotiating pressure to cease the use and restore the site. Injunctive action was reserved to this effect, with the support of Members.	Removal and restoration is now complete. Full compliance with planning law has been achieved. The case is reported in more detail under paragraphs 11 to 15 of Item 7 of these papers.
5	DC3/MA/04/COMP/0060 Tutsham Farm, West Farleigh  (Member: Ms Paulina Stockell)	The alleged depositing of waste materials on agricultural land.	To assist and support the Environment Agency as the lead enforcement authority in this instance.	The landowner, operator and business have already been convicted in the Magistrates Court for waste-related offences. The fines and costs were in excess of £71,000.	Under Members' request and encouragement, the EA are still actively considering the option of serving a Notice for removal of the deposited waste materials, by road and / or by water (i.e. the River Medway).

	<u>Site &amp; Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
6	<p><b>Shepway</b></p> <p>DC3/SH/10/COMP/A02</p> <p>Keith Cornell Waste Paper Ltd, Lympne Industrial Park, Lympne</p> <p>(Member: Ms Susan Carey)</p>	Alleged unauthorised waste-related recycling use on industrial land resulting in local residential complaints of noise and fire risk.	To achieve a reduction in the current amenity impacts through voluntary restraint, pending submission of a retrospective planning application.	Protracted negotiation has resulted in agreement by the operator to voluntarily limit the use and submit a retrospective planning permission.	Initial pre-application talks have taken place. However, Members' endorsement is sought as a contingency for the service of an Enforcement Notice, should a planning application not materialise and undue amenity impacts occur.
7	<p>DC3/SW/04/COMP/0059</p> <p>Four Gun Field, Upchurch</p> <p>(Member: Keith Ferrin)</p>	Alleged waste-activities on a former brickfield site with an associated lawful use.	To ensure that no waste-related use is carried out on site, particularly given its sensitivity close to housing.	An Enforcement Notice was served, appealed and upheld at Inquiry. The operator then appealed the Planning Inspector's decision in the High Court. The case was heard on 4th November 2010 and the appeal was dismissed. A verbal request for leave to appeal the judgement was denied. A formal written request has since been made but is so far undecided.	This case is the subject of a confidential report (see Item 12 of these papers). There are no current complaints but continuing support is sought for any High Court action deemed necessary to restrain any recurrence of the previous set of breaches.

	<b><u>Site &amp; Case Reference</u></b>	<b><u>Alleged Breach</u></b>	<b><u>Objectives / Actions</u></b>	<b><u>Progress</u></b>	<b><u>Notes / Remarks</u></b>
8	DC3/SW/10/COMP/0011 Thirwell Farm, Hernhill  (Member: Andrew Bowles)	Alleged ‘agricultural improvements’ through the importation / depositing of waste materials. The site is located adjacent to a flood plain and a local Nature Reserve and SSSI.	To check to see if Swale BC was correct in its assessment that such works were Permitted Development. The County Council had previously dissuaded the activity, declaring that it needed planning permission.	The importation of inert waste materials was damaging the land but through EA and County Council intervention that has now ceased. The land is currently used for the storage of straw bales.	Swale BC (SBC) has responsibility for the site. I was disappointed at not being consulted, which would have proved decisive. I have since agreed with SBC, the outline of a far stricter and specified approach to such proposals. That has already been applied to comparable cases. I propose to now remove from these schedules.



## **Schedule 2: Alleged breaches on Permitted Minerals & Waste Sites**

## ***Appendix 2***

	<b><u>Site &amp; Case Reference</u></b>	<b><u>Alleged Breach</u></b>	<b><u>Objectives / Actions</u></b>	<b><u>Progress</u></b>	<b><u>Notes / Remarks</u></b>
1	<b>Maidstone</b>  DC3/MA/04/COMP/0005 D&D Waste Recycling, Units 6,12 & 13 Detling Airfield, Detling, Maidstone  (Member: Ms Jenny Whittle)	Alleged breaching of conditions attached to the original 1995 planning permission for a Waste Transfer Station and unauthorised expansion onto adjoining units in (part) default of a confirmed Enforcement Notice.	To prevent further breaching and secure restoration of the site.	The overall activity has been scaled down, pending the outcome of complementary planning applications designed to regularise the set of breaches across 3 Industrial Units and provide a 'fit-for-purpose' waste transfer building, to cover the core site activities.	In view of the submissions, I now seek Members' support for Enforcement Action to continue to be reserved, pending their joint outcome. The applications are currently being processed.
2	<b>Tonbridge &amp; Malling</b>  DC3/TM/08/COMP/0013 Aylesford Metals Co. Ltd, Mill Hall, Aylesford	Complaints from local residents of out of hours working and visual amenity	To ensure compliance with the base planning permission and related Enforcement	Activity on site is at the moment reasonably balanced. Re-location	Close discussions continue with the operator, on the running of the current scrap

	(Member: Peter Homewood)	impacts from the over-stacking of scrap.	Notice.	holds the key to resolving issues on site. There are two potential alternative sites, in favour of housing at Mill Hall.	yard and on potential replacement sites. Members already support the seeking of an Injunction should co-operation be lost, with site impacts escalating unduly.
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	<b><u>Site &amp; Case Reference</u></b>	<b><u>Alleged Breach</u></b>	<b><u>Objectives / Actions</u></b>	<b><u>Progress</u></b>	<b><u>Notes / Remarks</u></b>
3	TM/08/3715 Borough Green Landfill Site, Wrotham Road, Borough Green  (Member: Ms Valerie Dagger)	Complaints received from Borough Green and Wrotham Parish Councils of mud on the road, apparently from Borough Green Landfill site and in alleged breach of condition 7 of planning permission TM/08/3715	To trace the source, stop the problem and ensure that there is no recurrence.	KHS, Kent Police and the EA became involved, alongside my own intervention. Following this, the site closed, only to be re-opened once the problems with the wheel and chassis cleaning equipment had been rectified. That is now the case.	The site is operational again with all parties apparently content with the action taken and the current standard of vehicle management and highway protection. I shall monitor the situation however, to ensure that there is no repeat of the earlier incident of mud on the Wrotham Road.

## Strengthening of Planning Enforcement

Report by Head of Planning Applications Group to the Regulation Committee on 25<sup>th</sup> January 2011

Summary: Representations to the Coalition Government for the Strengthening of Planning Enforcement Controls

Recommendation: To endorse the content of the report and to support the various initiatives for seeking new enhanced planning enforcement powers.

Local Member: N/A

Unrestricted

### Background

1. I reported to the last Meeting on the Localism agenda of the Coalition Government, as background to potential changes to planning enforcement. I also informed Members of a joint letter by the Leaders and Chief Executives of the Kent Districts sent to Greg Clark MP, Minister of State for Decentralisation, expressing concern over the inadequacies of the planning control regime. The Leader of Kent County Council was a further signatory.

### Meeting with DCLG

2. In response to the letter, District and County officers were invited to meet with representatives from DCLG to expand upon our concerns. We did so, stressing that the issues that the County Council is predominantly concerned with differ from those of the District Councils. Our concerns principally relate to serious environmental damage to the landscape caused by unregulated waste management. That not only causes unacceptable environmental and amenity harm but also creates an un-level playing field between those operating within and outside of planning law. This Authority has to tackle on a regular basis what can only be described as 'organised waste crime'. That in turn is part of an apparent 'black market' in waste.

#### *Key Points*

3. I raised the following key problems and suggested solutions with the DCLG Officers:
  - Designated landscapes and habitats should be protected from '*Landscape Vandalism*', by direct criminal prosecution.
  - Stop Notices should be free from compensation in the case at least of irreversible damage to protected landscapes. A new '*Landscape Protection Notice*' would be even better.
  - Planning Regulations should be re-drafted to prevent 'B2 Industrial Uses' (i.e. manufacturing type permissions and lawful uses) being used for heavy-duty recycling of demolition waste, free of normal County Council planning controls.

## Strengthening of Planning Enforcement

- District Councils should be required to consult the County Council on any proposed scheme such as golf courses which offer 'disguised' opportunities (often unjustified) for large scale land disposal of development spoil and soils.
  - Environmental Courts or modified Magistrates Courts need to be introduced to cover the enforcement demands of large scale County waste cases.
4. I left a briefing document with them and I attach at Appendix 1 to this report an executive summary for Members further information.

### *The County Council perspective*

5. Unauthorised waste handling at a County strategic level is highly lucrative and an immensely demanding problem to resolve. We have an unmatched track record in meeting such challenges but the odds are stacked in the contraveners favour. Appeals are used as delaying tactics and compensation provisions still attach to Stop Notices - our most draconian power. Those are now almost unusable, since serving them can place very significant levels of public money at risk from even technical reversals in Court.
6. We are currently disadvantaged in the worst and most pressing cases by an out-dated planning enforcement system and overly constrained powers. Those fail to offer immediate prosecution, triggering instead a process of planning scrutiny and appeals, lasting 2 years or more. Only if all appeals are won, does court action become an option. Even then in our experience, the Magistrates system seems unable to cope in its current form with the complexity and urgency of such cases.
7. Given the shortcomings of the current system of County planning enforcement, we are consigned in the worst cases to seek injunctive means of control. That is less than ideal since injunctions are difficult to secure, given the high evidential bar and overall are an expensive option. We have to resort to that power however, given undue restraints on the use of Stop Notices.
8. All of these points were powerfully impressed upon the DCLG officials, who showed sympathy for the issues raised. They confirmed that to introduce them would require both primary and secondary legislation.

### **The Localism Bill**

9. The Localism Bill has since emerged and addressees some but not all of the frustrations raised across the planning enforcement field. It centres on district council requirements, with little if any provisions for County Councils. The Bill will have had its Second Reading (17<sup>th</sup> January 2011) by the time of the Meeting. In attempting to use all channels to promote the County Council's enforcement cause, I have two further avenues to report.

## Strengthening of Planning Enforcement

### The Chairman's Initiative

10. The Chairman of this Committee Mike Harrison, on receiving a briefing from me on the above, kindly offered to broker a meeting with Greg Clark MP, enabling our views on the enforcement element of the Bill, to be made directly to him and his advisers. That is in hand. The Chairman has enlisted the support of the Deputy Leader of the Council, Alex King in this endeavour.

### Submission to the National Association for Planning Enforcement (NAPE)

11. NAPE is the enforcement arm of the Royal Town Planning Institute. An attempt is being made by the Association to enter a collective view on the enforcement parts of the Localism Bill before its Second Reading. That will be from the perspective of frontline enforcement staff. A view has been entered at officer level, in discussion with the Chairman Mike Harrison.

#### *Summary of the Draft Enforcement Provisions of the Localism Bill*

12. Chapter 5 of the Localism Bill relates to planning enforcement. In summary, it states that:

*"Chapter 5 allows local authorities in England to decline to determine retrospective planning applications where enforcement action is being taken. It also allows authorities to apply to a Magistrate's Court to enable enforcement action after statutory time limits have been exceeded, where there is evidence of deliberate deception and it increases some penalties and adjusts certain time limits with respect to enforcement. Finally, it provides powers relating to unauthorised adverts and the defacement of premises".*

#### *Comments on the Bill as drafted*

13. We advised that we would not wish to demur from any of these draft provisions. We went onto say that:

*"..... addressing some of the unfair aspects of retrospective planning permission is welcome. There needs to be a level playing field for applicants. Jumping the gun to gain advantage over law abiding developers, or seeking to side-step the planning system altogether, acquiescing only when caught, is unjust. The ability to challenge immunity from enforcement action in cases of deception is similarly welcome. The cause célèbre here is of course the case where a developer built a house within a barn, only revealing it when the time limit for action had expired. We support this new draft provision but we have reservations on the capacity of the Magistrates Courts to cope with the extra workload and to accord it due priority. We further support, any increase in penalties, along with adjustments to time limits in the Local Authority's favour. The new advert powers are intended for district councils so we shall refrain from commenting on that aspect".*

#### *Provisions missing from the Bill*

## Strengthening of Planning Enforcement

14. Those were our points on the enforcement section of the Bill, as drafted. However, more crucially we needed to point out what we considered to be missing from the Bill itself. In general, County Council planning enforcement needs are under-represented. To assist NAPE in drawing this out, we attached a mirror document to that submitted to DCLG (see paragraphs 3 and 4 above and appended executive summary). I shall report on any feedback received from NAPE at the Meeting.

### Conclusion

15. In conclusion, I can assure the Committee that every means at our disposal is being used to further the planning enforcement interests of this Authority and comparable County Councils. We have two 'live' channels of communication open with the Coalition Government at the moment i.e. the Chairman's direct initiative (see paragraph 10) and the indirect submission of our views through the auspices of The RTPI / NAPE. Both draw from the same base document, which has sought in turn to distil the experience of officers and the debate and input of Members of this Committee into a coherent '*shopping-list*' for new enforcement powers.
16. A review of planning enforcement tools and processes is long overdue, with a number of previous Governments recognising the need for change and undertaking consultation exercises. Unfortunately for various reasons they did not result in legislative changes. It is hoped that this sustained officer and Member pressure which builds upon earlier responses to Government consultations and our first hand experience will eventually bear fruit in this instance.

### Recommendation

17. I recommend that MEMBERS:

- (i) ENDORSE the content of this report and
- (ii) SUPPORT our current lobbying of the Coalition Government in the pursuit of enhanced planning enforcement powers.

Case Officer: Robin Gregory

01622 221067

Background Documents: see heading

# Strengthening of Planning Enforcement

## Item 8 Appendix 1

### Summary of waste planning enforcement problems and suggested solutions

#### **Problem 1:**

- Nationally protected landscape areas and internationally recognised ecosystems are vulnerable to organised waste crime and irreversible damage.
- Breach of planning regulation powers are inadequate to meet this challenge.

#### **Solutions:**

- Criminalisation of waste breaches in these areas.
- Creation of a new offence of '*Landscape (Ecological) Vandalism*'.
- Direct access to prosecution powers, using existing precedents.

#### **Problem 2:**

- Enforcement Notices (ENs) are dependent on Stop Notices (SNs) in stopping determined breaches.
- Stop Notices are not free-standing and are constrained by compensation concerns.

#### **Solutions:**

- New power – '*Landscape Protection Notice*', on TPO format.
- Non-appealable and offering permanent protection of areas of land.
- Re-vamping of existing EN and SNs.
- Free-standing SNs with no time-constraint or penalty for removal.
- Removable of the risk of compensation.

#### **Problem 3:**

- Use of B2 Industrial Use sites (particularly CLUEDs) for crushing and screening without further planning permission from the County Council.
- Encouraged by ambiguous description within overall definition of B2.
- High impact waste type uses are developing without appropriate control.

#### **Solutions:**

- Drafting amendments to the planning 'Use Classes Order'.
- Options are to extend the Northern Ireland template and / or clarify / redraw the terms of B2 Industrial Uses.

## **Strengthening of Planning Enforcement**

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### **Problem 4:**

- Public regulatory effort is often fragmented.
- 'Misleading / disguised' waste land-raising applications are bypassing the County Council.
- Strategic quantities of potential restoration materials are being lost to district permitted schemes.
- EA Exemption regime is lax and over-lenient.

### ***Solutions:***

- Statutory requirement for districts to consult County Councils on bulk material schemes and B2 Industrial CLUED and planning applications.
- Unused powers by other bodies within a case, defaulting to the County Council or its agents.
- EA Exemptions to require prior planning permission, or lawful equivalent.

### **Problem 5:**

- Heavy demands on Magistrates Courts, 'crowd-out' waste planning cases.
- Planning waste breaches are under-estimated in their urgency and impact.

### ***Solutions:***

- Introduction of 'Environmental Courts' to pool cases and expertise.
- Specialist training for Magistrates.

Planning Applications Group  
Kent County Council  
December 2010



## **Update on Planning Enforcement Issues at Deal Field Shaw (Shaw Grange), Charing**

A report by the Head of Planning Applications Group to the Regulation Committee on 25<sup>th</sup> January 2011.

Summary: Update on the latest enforcement position concerning the Deal Field Shaw (Shaw Grange) former landfill site, Charing, Ashford

Recommendation: To endorse the actions taken or contemplated.

Local Member: Mr Richard King

Unrestricted

### **Background**

1. I referred to this report, under Appendix 1, Schedule 1, No.1, within Item 7 of these papers.
2. Members are aware of the long planning enforcement history in this case and the eventual need for the County Council to acquire this landfill site in order to bring the situation to an end. The Authority has control of its restoration and management. Given the interests of local residents and the public investment involved in direct action here, I am keeping Members informed as to progress.

### **Site restoration**

3. KCC Waste Management is project managing this land recovery project. I have sought an update from them on the current situation at the site. I have been briefed as follows:

*"As you are probably aware we have done a significant amount of work here looking at both the problem and determining the solution.*

*In essence the next stages involve putting in a "holding tank" so that we can pump leachate to it from the sump. From there it is easily tankered away. Initially the tank will be surface mounted, but once we have a system in place and working effectively, then sunk into the ground and made "unobtrusive". At the same time the drains which run around the periphery of the site will be reinstated and designed to absorb rain water "run off".*

*We then need to tackle the root cause of the problem. The "capping liner" required under the planning approval was never placed so rain water enters the site where it remains trapped because the site liner continues to do its job effectively! The site fills up with leachate which we then need to dispose of which is an expensive and frankly unsustainable operation.*

*Whilst it is understood the finished contours could perhaps have been better engineered what we now propose to achieve is a basic tidying up of the boundary; treatment so that*

## **Update on Planning Enforcement Issues at Deal Field Shaw (Shaw Grange), Charing**



*the existing difference in contour heights is smoothed out together with the placing of a geotechnical liner to prevent the ingress of water. This measure alone will significantly improve the environmental performance of the site and will hopefully ensure we are able to satisfy our general obligations under Part 2A of the Environmental Protection Act (EPA) 1990.*

*It is not proposed to remove material off site since this is likely to be both a very expensive operation and in "best" engineering terms, unlikely to be of any significant benefit. Also exposing significant quantities of previously tipped material (including the putrescible element we are aware of) is likely to have a detrimental impact on nearby residential properties, not least because of the unpleasant odours likely to be released.*

*What is proposed is that a liner and cover material is placed over the entire tipped area to seal the site, and in turn reduce the volumes of produced leachate. It is proposed to keep this to the absolute minimum to guarantee success which is likely to increase the overall height of between 300mm to 500mm. I am sure you will agree this is acceptable given the very positive environmental improvements we will achieve.*

*I am currently undertaking an ecological survey of the site which I am hoping will confirm our view that there are no species present which we will need to translocate. Otherwise there might be a delay getting on within the current financial year.*

*Not doing anything is not an option here. Levels of leachate within the site continue to rise and need to be carefully monitored and managed. This is a costly operation and does not address the problem.*

*I am proposing to commence works on site in the Spring when ground conditions improve, but please do let me know if you need anything further from me in the interim."*

### **Site engineering**

4. It is clear from the above briefing that the restoration project, after detailed site investigation, now requires a final engineered solution. The options are covered in the note. For technical, environmental protection and financial reasons, a surface liner is required. The continued cost of leachate removal is unsustainable and the cost of removing any surplus tipping would be prohibitive. The amenity impacts involved in such an undertaking would be severe and probably overriding. The solution arrived at by KCC Waste Management, from analysis of all site factors and with the interests of adjoining residents in mind, has been the proposal as outlined.
5. Contours would be smoothed in an attempt to achieve the best landform in all the circumstances. Creative tree-planting would later help to absorb the site back into its local setting.

## **Update on Planning Enforcement Issues at Deal Field Shaw (Shaw Grange), Charing**

### **Planning Status of the works**

6. The original planning permission required an engineered surface solution. The County Council would be following that requirement but modifying the details to achieve a more acceptable outcome in visual terms. A proper level of site control would be achieved, affording protection for local residents, which is the clear and overriding priority. The related technical works are either provided for within the original scheme, the site Action Plan or are permitted development under Part 12 of the General Permitted Development Order (Development by Local Authorities).
7. I propose to confirm to KCC Waste Management that they are able to proceed this Spring with their engineered and tailored site solution, so long as prior details are lodged with me. That is for the record and in order to verify to third parties that the County Council is fulfilling the planning enforcement duties that it assumed when buying the site.

### **Conclusion**

8. Site investigations at Shaw Grange have given way to site and surface engineering. The leachate problem requires a technical solution. KCC Waste Management has outlined their proposed plan, which I accept as the best available in all the circumstances. That is from a technical, residential protection, environmental, visual and public financial perspective. Sensitive landscaping is an important feature of the scheme which should help to absorb the site back within this attractive AONB setting.

### **Recommendation**

9. I RECOMMEND that:
  - (i) MEMBERS ENDORSE the content of paragraph 7 of this report, concerning the surface engineering of the site and related technical works; on the proviso that details are first lodged with me for enforcement and verification purposes, and
  - (ii) that this report forms the basis of any briefing given to local residents or other adjoining land interests, concerning the site.

Case Officer: Robin Gregory

01622 22 1067

Background Documents: see heading

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By virtue of paragraph(s) 5, 6 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

Agenda Item 13

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